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| <p style="text-align: right;">Page 1</p> <p>1 UNITED STATES DISTRICT COURT 2 WESTERN DISTRICT OF WISCONSIN 3 4 UNITED STATES SECURITIES) Case No. AND EXCHANGE COMMISSION,) 3:20-cv-00076(WMC) 5) Plaintiff,) 6) v.) 7) EDWARD S. WALCZAK,) 8) Defendant.) 9 _____) 10 11 12 13 14 REMOTE VIDEOTAPED DEPOSITION OF EDWARD WALCZAK 15 Tuesday, July 27, 2021 16 17 18 19 20 21 22 23 24 Reported By: Vanese Killingbeck, RPR 25 JOB No. 210727VK</p> | <p style="text-align: right;">Page 3</p> <p>1 APPEARANCES (Continued): 2 3 For Defendant Edward S. Walczak: 4 KOPECKY SCHUMACHER ROSENBERG, LLC BY: JAMES L. KOPECKY 5 Attorney at Law 120 North LaSalle Street, Suite 2000 6 Chicago, Illinois 60602 (312) 380-6552 7 jkopecky@ksrlaw.com 8 9 Videographer: Rashad Hunter 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> |
| <p style="text-align: right;">Page 2</p> <p>1 APPEARANCES: 2 For Plaintiff: 3 UNITED STATES SECURITIES AND EXCHANGE COMMISSION 4 BY: MICHAEL D. FOSTER Attorney at Law 5 175 West Jackson Boulevard, Suite 1450 Chicago, Illinois 60604 6 (312) 353-7390 (312) 353-7398 FAX fostermi@sec.gov 7 - and - 8 9 UNITED STATES SECURITIES AND EXCHANGE COMMISSION 10 BY: JAKE SCHMIDT Attorney at Law 11 175 West Jackson Boulevard, Suite 1450 Chicago, Illinois 60604 (312) 353-7390 (312) 353-7398 FAX 12 schmidtj@sec.gov 13 For Defendant Edward S. Walczak: 14 15 ZILIAK LAW, LLC BY: ZACHARY ZILIAK Attorney at Law 16 141 West Jackson Boulevard, Suite 4048 Chicago, Illinois 60604 17 (312) 462-3353 (312)277-7347 FAX zachary@ziliak.com 18 - and - 19 20 ZILIAK LAW, LLC BY: STEVE BYLINA Attorney at Law 21 141 West Jackson Boulevard, Suite 4048 Chicago, Illinois 60604 22 (312) 462-3353 (312)277-7347 FAX sbylina@ziliak.com 23 24 25</p> | <p style="text-align: right;">Page 4</p> <p>1 INDEX 2 WITNESS: EXAMINATION 3 EDWARD WALCZAK 4 BY MR. FOSTER 7 5 6 EXHIBITS 7 EXHIBIT NO. DESCRIPTION PAGE 8 Exhibit 1 Notice of Deposition 9 9 Exhibit 2 03/05/07 E-mail 93 10 Exhibit 3 11/04/14-Transcriptof Open House Call 147 11 Exhibit 4 10/13/15-Transcriptof Open House Call 171 12 13 Exhibit 5 03/01/16-Transcriptof Open House Call 187 14 Exhibit 6 03/29/16-Transcriptof Open House Call 196 15 16 Exhibit 7 06/07/16-Transcriptof Open House Call 202 17 Exhibit 8 12/13/16-Transcriptof Open House Call 206 18 19 Exhibit 9 10/25/16-Transcriptof Open House Call 217 20 Exhibit 10 08/24/14- E-mail exchange with Chip Hano 221 21 22 Exhibit 11 08/26/14E-mailexchange with Erina Ford 233 23 24 Exhibit 21 E-mailexchangewith Ms. Rios 270 25</p> |

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| <p style="text-align: right;">Page 5</p> <p>1 EXHIBITS CONT'D</p> <p>2</p> <p>3 EXHIBIT NO. DESCRIPTION PAGE</p> <p>4 Exhibit 25 01/02/17 E-mail Exchange</p> <p>5 with Brandon Schwulst 228</p> <p>6 Exhibit 28 02/14/17 E-mail Exchange</p> <p>7 with Mr. Szilagyi 240</p> <p>8 Exhibit 29 12/10/16 E-mail Exchange</p> <p>9 with Ms. Rios 242</p> <p>10 Exhibit 34 02/27/17 Transcript of</p> <p>11 Open House Call 261</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>Exhibit 36 Answer to SEC's Complaint 279</p> | <p style="text-align: right;">Page 7</p> <p>1 EDWARD WALCZAK,</p> <p>2 having been first duly sworn, was examined and</p> <p>3 testified as follows:</p> <p>4 EXAMINATION</p> <p>5 BY MR. FOSTER:</p> <p>6 Q. Good morning, Mr. Walczak. Again, we met</p> <p>7 sometime ago briefly, but I'm one of the attorneys</p> <p>8 for the SEC in this litigation. And before we get</p> <p>9 started, I'm just going to cover a few</p> <p>10 preliminaries. I'd ask that if all attendees who</p> <p>11 are not actively involved in the -- in the</p> <p>12 questioning or stating objections mute their</p> <p>13 microphones, unless -- until they speak. That will</p> <p>14 help with the audio quality. I'd also ask that the</p> <p>15 parties and counsel identify on the record if other</p> <p>16 individuals are present with them physically at any</p> <p>17 time during the deposition. I don't believe that's</p> <p>18 the case.</p> <p>19 Mr. Walczak, you and Mr. Kopecky are in</p> <p>20 separate locations?</p> <p>21 A. Correct.</p> <p>22 Q. Is that correct?</p> <p>23 A. Correct.</p> <p>24 Q. Okay. You're by yourself -- you're by</p> <p>25 yourself, then, in an office?</p> |
| <p style="text-align: right;">Page 6</p> <p>1 Remote Proceedings</p> <p>2 10:38 a.m. to 7:18 p.m.</p> <p>3 - - - -</p> <p>4 VIDEOGRAPHER: Good morning, everyone.</p> <p>5 Here begins the videotaped deposition of</p> <p>6 Edward Walczak, testifying in the matter of</p> <p>7 SEC versus Walczak. Today's date is</p> <p>8 July 27th, 2021. The time on the record is</p> <p>9 9:38 a.m.</p> <p>10 My name is Rashad Hunter, the</p> <p>11 videographer. Our court reporter today is</p> <p>12 Vanese Killingbeck.</p> <p>13 Counsel, will you please introduce</p> <p>14 yourselves for the record and the witness will be</p> <p>15 sworn.</p> <p>16 MR. FOSTER: Mike Foster on behalf of</p> <p>17 Securities and Exchange Commission.</p> <p>18 MR. SCHMIDT: Hi. Jake Schmidt on behalf</p> <p>19 of the Securities and Exchange Commission.</p> <p>20 MR. KOPECKY: We have Jim Kopecky,</p> <p>21 Steve Bylina, and Zachary Ziliak on behalf of</p> <p>22 Ed Walczak.</p> <p>23 ///</p> <p>24 ///</p> <p>25 ///</p> | <p style="text-align: right;">Page 8</p> <p>1 A. I am.</p> <p>2 Q. Okay. This deposition is being recorded</p> <p>3 by a videographer. So no other participants should</p> <p>4 record or otherwise capture the images on the screen</p> <p>5 during the deposition.</p> <p>6 And the oath that was just administered</p> <p>7 was given remotely. Mr. Walczak, just to confirm</p> <p>8 that you consent to taking an oath to swear to tell</p> <p>9 the truth remotely via audio-visual means rather</p> <p>10 than in person?</p> <p>11 A. I do.</p> <p>12 Q. And you agree that it has the same --</p> <p>13 same -- the oath has the same effect as if it was</p> <p>14 administered in person, correct?</p> <p>15 A. I agree.</p> <p>16 Q. Thank you. And you're represented today</p> <p>17 by Mr. Kopecky, among other counsel, correct?</p> <p>18 A. That's correct.</p> <p>19 Q. The notice of deposition for your</p> <p>20 testimony was served on Mr. Kopecky. I've already</p> <p>21 marked that amended notice of deposition as</p> <p>22 Exhibit 1. And I've moved that into the marked</p> <p>23 exhibit folder in Egnite.</p> <p>24 Given that we are conducting this</p> <p>25 testimony via Webex, I'd also want to ask you to</p> |

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1 confirm a few other things before we -- we get into
2 the substance.

3 Do you agree that you will not review or
4 rely on any documents, including notes or websites
5 or e-mails outside of the exhibits during testimony,
6 unless you so identify and make that part of the
7 record?

8 A. I agree.

9 (Exhibit 1 was marked for identification.)

10 BY MR. FOSTER:

11 Q. Do you agree that you will not have any
12 other applications open on your computer, other than
13 the video conferencing application for the
14 deposition for Egnyte, or presumably you have, you
15 know, a viewer that you're using to -- to view the
16 exhibits outside of Egnyte. So outside of those
17 applications, you agree not to have any other
18 applications open?

19 A. I agree. I should close some down now, if
20 that's a constraint.

21 Q. Why don't you give -- give me the favor
22 and do that just so we'll get as far as that goes.

23 A. All right. Everything is closed. I
24 feared that I had also closed the meeting, but it
25 looks like we're still here.

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1 Q. Okay. Thank you.

2 Two -- two last points on -- on sort of
3 the Webex format that we're -- we're using. Will
4 you agree not to engage in any communications,
5 including not limited to e-mails, texts, chats, et
6 cetera, pertaining to the subject matter of this
7 testimony with anyone other than the SEC and counsel
8 today?

9 A. I agree.

10 Q. And will you alert the SEC if and when you
11 and your counsel are communicating privately while
12 the testimony session is taking place?

13 A. Yes.

14 Q. Okay. Obviously, you know, if you and
15 your counsel -- if you want to have a discussion
16 with your counsel, that's a separate issue.
17 We'll -- and we can go off the record at an -- an
18 appropriate time and you can have -- you can have
19 that discussion offline.

20 You provided testimony, obviously, during
21 the SEC's presuit investigation, so I know you have
22 some familiarity with the process, but a few last
23 reminders sort of before we get started. Please
24 answer verbally, since our dialogue is being
25 transcribed into a written transcript as well as

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1 being recorded. And to further help the reporter
2 out, let's try not to speak over one another. So
3 allow me to finish a question before beginning your
4 answer, and I'll do my best to reciprocate, and that
5 will help the court reporter take down what's being
6 said. If you don't understand a question, please
7 let me know. I'll try to restate it or rephrase it.
8 If you answer a question, I'll assume you heard it
9 and understood it; is that fair?

10 A. It is.

11 MR. KOPECKY: Standard objection as it
12 doesn't mean he understood it the way you intended
13 it.

14 BY MR. FOSTER:

15 Q. If you need a break at anytime,
16 Mr. Walczak, let me know, we'll take one. I would
17 just ask that you bear with me if a question was
18 pending, and we'll first finish that particular
19 question and answer, and then we can -- we can take
20 a break. And we'll take -- we'll take a few breaks,
21 I'm sure, as we go forward.

22 If there's anything you want to clarify,
23 or if you remember something, please let me know,
24 and we'll revisit that issue at the appropriate
25 time. And is there anything that will grant you

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1 from giving full and complete answers here today?

2 A. Not that I'm aware of, no.

3 Q. Is there anything that might impair your
4 ability to understand the questions that I -- that I
5 ask? For example, are you sick, taking medication,
6 any other reason that you can think of that would
7 cause you not to be able to answer my questions
8 fully?

9 A. No.

10 Q. All right. As I mentioned, I think
11 everybody's aware, that you provided testimony
12 over -- over several days during the -- the presuit
13 investigation in this matter. You're also a
14 defendant in a lawsuit filed by the CFTC. Are you
15 otherwise involved in any legal proceedings since
16 this case was filed in -- in January 2020?

17 A. Have I been, or am I currently? Which is
18 your question?

19 Q. Sure. How about have you been?

20 A. I have been.

21 Q. Okay. And were any of those matters that
22 you were -- you've been involved in, are those --
23 any of those still pending?

24 A. Not at this time, no.

25 Q. Okay. And what -- was there one matter?

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1 More than one matter?
 2 A. There was one matter, an arbitration
 3 between myself and my previous contract employer.
 4 Q. Okay. And I assume you're referring to
 5 Catalyst Capital Advisors?
 6 A. Correct.
 7 Q. Okay. And so you were -- you were a party
 8 to an arbitration with Catalyst, and that
 9 arbitration has -- has wrapped up?
 10 A. It has.
 11 Q. Okay. As -- as we go forward today, if I
 12 refer to Catalyst, you'll understand that I'm
 13 referring to Catalyst Capital Advisors?
 14 A. Yes. Mr. Foster, if I make -- if I can
 15 make one quick note on video. Your audio and video
 16 is -- appears to me on my end to be a little out of
 17 sync. It's not a problem now. But I just want to
 18 alert you that if it becomes a problem, I'll mention
 19 it.
 20 Q. Okay. Sure. No problem. If the problem
 21 persists --
 22 MR. KOPECKY: You look like a bad movie.
 23 You look like a poorly dubbed movie.
 24 MR. FOSTER: Okay. I can -- why don't
 25 we -- why don't we pause for one second, and I'll

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1 just re -- try to reconnect my audio.
 2 Okay. How is that? Is that any better?
 3 THE WITNESS: Again, I'm not having any
 4 trouble hearing the audio. It's just a little
 5 distracting with the disconnect. I didn't know if
 6 there was any -- with the disconnect, it seems
 7 better.
 8 MR. FOSTER: Okay. All right. Well, when
 9 we -- when we take a break, I'll try to -- I'll try
 10 to -- I can reconnect the -- the video as well and
 11 see if that fixes the problem.
 12 BY MR. FOSTER:
 13 Q. All right. So you previously were
 14 affiliated with -- with Catalyst, that's right?
 15 A. I was employed under a contract with them,
 16 yes.
 17 Q. Okay. And that began in approximately
 18 August of 2013?
 19 A. Yes, approximately then.
 20 Q. Okay. And that was when the
 21 Hedged Futures Strategy Fund was launched as a
 22 Catalyst advised mutual fund?
 23 A. Correct.
 24 Q. Okay. So today when I refer to the head
 25 futures -- the Hedged Futures Strategy Fund, I'll

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1 simply refer to it as Hedged Futures or the Fund,
 2 and you'll understand what I mean?
 3 A. Yes.
 4 Q. Okay. And you were previously the
 5 portfolio manager for that fund?
 6 A. Yes.
 7 Q. Okay. And so starting in approximately
 8 August 2013 until -- until when did that no longer
 9 hold true?
 10 A. I was terminated on January 27th of 2020.
 11 Q. And were you given a reason for your
 12 termination?
 13 A. No.
 14 Q. Who -- who informed you that you were
 15 terminated?
 16 A. I received an e-mail from Jerry Szilagyi.
 17 Q. And what did that e-mail say?
 18 A. The e-mail, without recalling exact
 19 language, said that I was terminated effective
 20 immediately for cause.
 21 Q. And did Mr. Szilagyi identify the reasons
 22 that you were terminated for cause?
 23 A. He did not.
 24 Q. Did you subsequently ask him?
 25 A. I did.

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1 Q. Okay. Soon after receiving that e-mail?
 2 A. Yes.
 3 Q. How did you -- was that via e-mail or
 4 phone communication?
 5 A. Via e-mail.
 6 Q. And did he respond to you?
 7 A. No.
 8 Q. So at any point did you ask whether --
 9 over via e-mail, text, chat, or phone communication,
 10 did you have any discussion with Mr. Szilagyi as to
 11 why he informed you that you were terminated for
 12 cause?
 13 A. No.
 14 Q. Did you have that discussion with anyone
 15 else at Catalyst?
 16 A. No.
 17 Q. Did you come to learn at any point what --
 18 what Catalyst's basis for terminating you for cause
 19 was?
 20 A. They did not specify to me any cause as
 21 defined by my employment agreement, no.
 22 Q. Whether -- whether -- in your view defined
 23 by your employment agreement or otherwise, did
 24 you -- did you come to learn in any way, shape, or
 25 form, what Catalyst's position was, why they

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| <p style="text-align: right;">Page 17</p> <p>1 informed you that you were terminated for cause?</p> <p>2 A. I don't recall exactly. We had no</p> <p>3 communication until the arbitration proceedings, so</p> <p>4 a great deal of testimony during an arbitration</p> <p>5 or -- proceedings. I don't honestly recall a</p> <p>6 specific agent of cause. Lots of -- lots of, as I</p> <p>7 said, testimony. But, again, I can't -- can't</p> <p>8 recall a specific cause, again, as defined in the</p> <p>9 employment agreement.</p> <p>10 Q. What was it -- was there a written</p> <p>11 statement or claim submitted by Catalyst in the</p> <p>12 arbitration proceeding?</p> <p>13 A. I think they -- they had -- best of my</p> <p>14 recollection is they had several counter claims --</p> <p>15 to initiate the arbitration, they had several</p> <p>16 counter claims.</p> <p>17 Q. Okay. And there -- there was a document</p> <p>18 reflecting what their counter claims were?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And did you review that document?</p> <p>21 A. I did.</p> <p>22 Q. Okay. And did that -- that document</p> <p>23 provide an explanation from Catalyst's viewpoint as</p> <p>24 to why they terminated you for cause?</p> <p>25 A. My recollection of their counter claims</p> | <p style="text-align: right;">Page 19</p> <p>1 the decision on the claims themselves has been</p> <p>2 concluded.</p> <p>3 Q. Okay. And so you -- you mentioned that</p> <p>4 the arbitrator ruled in your favor on your claims.</p> <p>5 I'm sorry, I missed what -- what was the</p> <p>6 ruling with respect to Catalyst's counterclaims?</p> <p>7 A. He -- he denied their counterclaims.</p> <p>8 Q. And when was the -- if you can remind me,</p> <p>9 when was the arbitration hearing?</p> <p>10 A. Roughly a month ago, I think.</p> <p>11 Q. And did you testify in that proceeding?</p> <p>12 A. I did.</p> <p>13 Q. Okay. And let me be a little more</p> <p>14 specific. So in advance of the actual hearing</p> <p>15 itself, did you provide any sworn testimony in a --</p> <p>16 in a setting similar to today's deposition?</p> <p>17 A. I did.</p> <p>18 Q. And then I take it -- I understand you to</p> <p>19 say that you also testified at the hearing itself?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And did you do that in person?</p> <p>22 A. Yes. Well, to be -- to be clear, I gave a</p> <p>23 video deposition in advance of the hearing. The</p> <p>24 hearing was conducted in person.</p> <p>25 Q. And where was the hearing held?</p> |
| <p style="text-align: right;">Page 18</p> <p>1 didn't involve cause, rather, they were seeking</p> <p>2 monetary damages from me for various matters.</p> <p>3 Q. Okay. And are you able to say why -- why</p> <p>4 they were seeking monetary damages from you?</p> <p>5 A. Well, I can recall the -- the -- one of</p> <p>6 the claims was that they wanted me to share in their</p> <p>7 settlement with your agency and with the CFTC. One</p> <p>8 of their claims was that they wanted me to share in</p> <p>9 their settlement of a private, civil lawsuit against</p> <p>10 them. And I think the third claim was related to --</p> <p>11 to their belief that I had damaged their business</p> <p>12 subsequent to the regulatory investigation.</p> <p>13 Q. And you mentioned that the arbitration is</p> <p>14 no longer pending. So was there -- was there a</p> <p>15 decision by the arbitrator or arbitration panel</p> <p>16 that -- that concluded the proceeding?</p> <p>17 A. Yeah. And I -- and I guess to -- to be</p> <p>18 completely correct, there is still -- there's still</p> <p>19 an awards phase of the arbitration is pending. The</p> <p>20 claims have been adjudicated -- again, I apologize</p> <p>21 for my lack of precision in some of the legal terms,</p> <p>22 but the arbitrator awarded in my favor on my claims</p> <p>23 and filed against Catalyst on their claims.</p> <p>24 And as I said, we're -- there's still a</p> <p>25 final determination of the award amount, but they --</p> | <p style="text-align: right;">Page 20</p> <p>1 A. In Chicago.</p> <p>2 Q. And did you testify just in -- on one</p> <p>3 given day or over multiple days?</p> <p>4 A. I believe I testified on two different</p> <p>5 days.</p> <p>6 Q. All right. So just circling back for a</p> <p>7 moment. The -- the e-mail from Mr. Szilagyi</p> <p>8 informing you that you were being terminated for</p> <p>9 cause, that was in January of 2020?</p> <p>10 A. I believe it was January 27th, yes.</p> <p>11 Q. So just prior to that message from</p> <p>12 Mr. Szilagyi, you were -- you were still the</p> <p>13 portfolio manager for the Hedged Futures Fund?</p> <p>14 A. Yes.</p> <p>15 Q. And were you the portfolio manager for any</p> <p>16 other Catalyst-advised fund at that time?</p> <p>17 A. Not at that time, no.</p> <p>18 Q. What about outside of Catalyst? Were</p> <p>19 you -- were you managing any other funds or</p> <p>20 portfolios besides the Hedged Futures Fund?</p> <p>21 A. Only private accounts, no -- no publicly</p> <p>22 available funds.</p> <p>23 Q. Okay. How many private accounts were you</p> <p>24 managing at the time that Catalyst terminated your</p> <p>25 contract?</p> |

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1 A. I don't recall if there were multiple
 2 accounts at that time there are today. Again,
 3 multiple accounts, meaning proprietary exempt
 4 accounts.
 5 Q. Sure. Why don't you just tell me, as best
 6 you can, what you're referring to when you -- when
 7 you told me you were managing private accounts?
 8 Who -- who were the -- who were the account -- the
 9 account holders, and were you doing this through
 10 some other vehicle or corporation?
 11 A. Yeah. A number of entity accounts,
 12 essentially controlled by -- controlled by myself
 13 and my wife.
 14 Q. So was there a corporate entity or form
 15 through which you were --
 16 A. Yes. Several. I managed a -- again, an
 17 exempt pool, which consisted mostly of family
 18 members and myself and my wife. I managed -- again,
 19 at that time I don't know if I had -- I don't recall
 20 specifically back in January '20. In fact, I don't
 21 think I had other accounts open today. I do have
 22 accounts open under other entities.
 23 Q. And --
 24 A. You know, I -- yeah. And, again, my
 25 memory's just not completely clear about that

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1 specific date. I could certainly tell you what I
 2 have going now.
 3 Q. Sure. One -- we'll get to that in one
 4 second.
 5 So the account that you believe that you
 6 recall, your best recollection there was -- there
 7 was one account you were managing at that time.
 8 What was the name of the -- the entity?
 9 A. It was called the -- it's called
 10 Arlington Holdings.
 11 Q. And you -- were you the sole sort of
 12 decisionmaker for the -- the investments for that --
 13 the Arlington Holdings account?
 14 A. Well, I was certainly the trader. There's
 15 a -- it's managed by an entity, again, controlled by
 16 myself and my wife. There are others who contribute
 17 opinion and business advice, minority shareholders,
 18 a cousin, et cetera.
 19 Q. Okay. Is the managing entity controlled
 20 by you and your wife, Arlington Holdings, or is that
 21 a different --
 22 A. That's the -- that's the Fund. The -- the
 23 managing partner for that fund is
 24 Arlington Capital Management.
 25 Q. So since you were terminated or informed

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1 by Mr. Szilagyi that your contract was terminated in
 2 late January 2020, what have you been doing for
 3 employ -- employment, if anything?
 4 A. I have not been formally employed.
 5 Q. Are you earning income through some
 6 activity?
 7 A. I trade.
 8 Q. Trade for yourself, or you're -- it sounds
 9 like you're managing accounts for -- for yourself
 10 and other people?
 11 A. Again, I have -- still manage the exempt
 12 fund, but I don't take any income from it. My
 13 income is derived from personal accounts, my wife's
 14 account, an entity controlled by myself and my wife.
 15 Q. So how many different accounts are you
 16 trading through currently?
 17 A. Currently, three.
 18 Q. Okay. And just -- we're not belaboring,
 19 but just run those down for me. So one would be the
 20 Arlington Holdings, and the other two are?
 21 A. A trust account in my wife's name, and
 22 another entity by the name of Preservation Holdings.
 23 Q. And, I'm sorry, I didn't catch that last
 24 name, Preservation Holdings?
 25 A. Preservation Holdings.

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1 Q. And did you have an interest in -- in the
 2 funds held by Preservation Holdings?
 3 A. Yes. It's a -- I don't remember the exact
 4 split, but it's myself and my wife.
 5 Q. Besides your wife -- so it's
 6 Preservation Holdings, it's just you and your wife.
 7 The other account you mentioned was a trust for -- a
 8 trust for the benefit of your wife or the name of
 9 your wife?
 10 A. Correct.
 11 Q. And did she -- who's the beneficiary of
 12 that trust?
 13 A. Honestly, I don't -- don't recall if she's
 14 the beneficiary or I'm the beneficiary. I don't
 15 recall how the trust was set up.
 16 Q. Fair enough. But it's either you or her
 17 or both?
 18 A. Correct.
 19 Q. Okay. Then with respect to
 20 Arlington Holdings, are there any other sort of
 21 interested investors in the Fund, other than you
 22 and/or your wife?
 23 A. There are.
 24 Q. Okay. Other family members?
 25 A. Some family members, some -- and, again,

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1 the legal definition of family member, for example,
 2 I have a cousin in there. But, again, it's -- it's
 3 commodity pool that is exempt from regulation under
 4 an exemption whose name and number I can't quote.

5 Q. Okay. And across these three accounts,
 6 can you ballpark how much the -- an asset that
 7 you're managing?

8 A. \$3 million currently.

9 Q. And how much of that capital is you or --
 10 and/or your wife's?

11 A. Probably about myself and my wife
 12 specifically, maybe 2 million or 3.

13 Q. Okay. Let's turn back to the time when
 14 you were the portfolio manager for the
 15 Hedged Futures Fund. And, specifically, for the
 16 moment anyway, I may alter the time period, but I'm
 17 talking about basically the period from the Fund's
 18 formation as a mutual fund in or about August of
 19 2013 through February 2017.

20 During that period, the -- the Fund held a
 21 portfolio of money market funds, short-term notes
 22 and bonds, and other low-risk fixed income
 23 instruments; is that fair?

24 A. Sure. Sure. During the life of the Fund,
 25 the -- I can say, with some certainty, we always

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1 held those types of instruments to some degree.

2 Q. And then in addition, the Fund held a
 3 large portfolio of options based on S&P 500 Index
 4 future contracts; is that right?

5 A. That's the other instrument that we traded
 6 in, yes.

7 Q. And the futures -- the futures option
 8 portfolio was responsible for virtually all of the
 9 Fund's risk; is that -- is that accurate?

10 A. I would say, yes, the risk and the
 11 appreciation potential. That's the instrument we
 12 used.

13 Q. And I know you testified regarding that
 14 the strategies that you employed in trading the
 15 options futures to earn a return for the Fund, but
 16 there were -- there were two strategies; is that
 17 right?

18 A. Well, there were many different elements
 19 to the strategy. I often tried to carve them up and
 20 explain the strategy into a -- a call side strategy
 21 and put side strategy.

22 Q. Okay. And so on the call side strategy,
 23 that was an above-the-market in call strategy; is
 24 that right?

25 A. Correct.

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1 Q. And on the put side, it was a
 2 below-the-market put strategy?

3 A. Yes.

4 Q. Okay. Was there another, you know, sort
 5 of strategy that you would, you know, refer to other
 6 than those two in describing the overall strategy of
 7 the Fund?

8 A. Those -- and, again, to try to simplify a
 9 more complex option strategy, I did try to carve it
 10 up into those two strategies. There were -- there
 11 were times when we traded some options after money,
 12 so it was a -- it's a, you know -- a minor
 13 distinction to say, Well, sometimes we have
 14 after-money calls, sometimes we have in-the-money
 15 calls. But there was -- it was generally employed a
 16 call side strategy and a put side strategy, as you
 17 described. Not always, but most of the time, the
 18 calls were above-the-market, puts were below the
 19 market, sometimes out of the money, sometimes even a
 20 little bit in the money.

21 Q. With respect to the above-the-market call
 22 strategy, would you, then, purchase out-of-the-money
 23 call options as part of that strategy?

24 A. We very rarely, if -- on entry, as opposed
 25 to risk management or adjustment, we didn't often

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1 simply go out and purchase call options. That was,
 2 in fact, not a part of the strategy.

3 Q. Right. I'm sorry. So I should say you
 4 purchased out-of-the-money call options and sold
 5 options with strike prices even further above the
 6 market price of the purchased call options?

7 A. Correct. And that -- that was done as a
 8 single transaction, commonly known as a spread.

9 Q. And so the strike prices of both were --
 10 were above the current market price of the
 11 underlying asset, correct?

12 A. The majority of the time, that's true,
 13 yes.

14 Q. At least upon initiation, right?

15 A. Yes.

16 Q. And if the market moved up into that range
 17 between the -- the long position and the options you
 18 had purchased and the short positions, meaning the
 19 options that were sold, the Fund would make money;
 20 is that correct?

21 A. Depending on the time frame, that's an
 22 area where we would like the market to be at
 23 expiration, in fact, even beyond the short strength.
 24 Again, it depends on the time frame in terms of how
 25 long the options had to expiration.

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1 Q. All right. But is that -- did that range
2 between the -- the strike prices of the -- of the
3 purchased options versus the options that were
4 written or sold that -- that generates the profit?
5 There was -- there was a target range between the
6 two that would result in the Fund making money?

7 A. Well, the Fund could make money in a lot
8 of different ways. And at expiration, expiring in
9 that range was one of those ways, yes.

10 Q. All right. Why don't -- why don't you
11 just tell me how -- how the Fund would make a profit
12 from the above -- the market call strategy?

13 A. So the way you describe is one way, but,
14 again, you could be in that range. And if you were
15 in that range with a long enough time to expiration,
16 you probably be -- not making money. You'd be
17 losing money. As time passes, you start to make
18 money in that range, and certainly an expiration,
19 you would make money in that range. And, in fact,
20 as I said, that expiration, you make money on the
21 short option strength.

22 The other way you can make money is simply
23 because the further out the money, short options
24 tend to detain in value faster than the long
25 options. So even if the market never approached

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1 that ideal profit range, the spread would gradually
2 become profitable and could be exited at profit.

3 Sometimes changes in volatility,
4 independent of price, would have a different impact
5 and a lot of different ways on the long and short
6 options, and that would also result in profit.
7 Those -- you know, top of my head for the sake of
8 answering your questions as succinctly as possible,
9 those are three ways you could do it.

10 Q. And how would -- or how did the Fund lose
11 money from the above-the-market call strategy?

12 A. Well, again, a couple different ways. One
13 is the most common way is if the market advanced too
14 rapidly, relative to the decay in the -- the short
15 options position. That was the most -- the most
16 common risk that -- that is inherent in those types
17 of structures.

18 Q. So if the market reaches a certain point
19 above the range of the -- between the -- the long
20 options and the short options, the Fund could lose
21 money?

22 A. Sure. But, again, it's important to know
23 that you could -- you could certainly make money
24 well beyond the short option that the -- the maximum
25 profit occurs right at the short option strike, but

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1 it's symmetrical. There's equal profit ten points
2 below as there is ten points above an expiration.
3 So the -- the issue is in managing positions is
4 really the element of time. In expiration, that's
5 where you would like to be prior to expiration. You
6 would rather not be up that high relative to the
7 position in strength.

8 Q. And there's -- there's a -- there's a
9 point, though, above the strikes where -- where both
10 the long and short options are with the money that
11 an expiration would cause the Fund to lose money on
12 those -- on those trades, correct?

13 A. Correct.

14 Q. Okay. And was that true in part because
15 you sold more options than you purchased?

16 A. At initiation, it was -- it was typical
17 to -- you know, these were called -- again, not to
18 become too technical, unless you would like me to,
19 but these are called ratio spreads. Sometimes we
20 did one long for two shorts. Sometimes one long for
21 three shorts. Generally speaking, at initiation,
22 you would sell more than the purchase. As we
23 identified, the need to further hedge those
24 positions, we'd then go back in and buy additional
25 on call options or exit some of the shorts.

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1 But in initiations, it's fair to say that
2 we sold more than we bought.

3 Q. So talking specifically about the
4 above-the-market call strategy, what were the risks
5 of -- of that strategy to the Fund?

6 A. The two primary risks were a rapid price
7 appreciation to the upside. Again, rapid could mean
8 a lot of different things. It depends on our kind
9 of the environment, it depends on the structure,
10 and, importantly, the time of expiration of the
11 position. So rapid means outpacing the -- the time
12 decay of the short option.

13 And, secondarily, in the very, very
14 unusual circumstance that volatility built into the
15 options, either increased overall or increased due
16 to a shift in the pricing of the short options. So
17 sometimes further out the money options increased
18 the volatility and yours -- the money ones don't
19 increase as rapidly, that's called a skew.

20 If the skew shifts, that's something that
21 I -- I paid attention to when I was at risk. So
22 primarily rapid price appreciation, and to a lesser
23 degree, because it was very rare, an increase in
24 volatility. Volatility in the options.

25 Q. And how did you assess or attempt to

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1 measure those risks that you just described for the
 2 above-the-call market strategy for the
 3 Hedged Futures Fund?
 4 A. Well, for -- for the entire fund, we used
 5 a menu of risk tools. A set of metrics, really
 6 operating metrics, but important part of operating
 7 the Fund was managing risks. So they were designed
 8 to identify the profile of the portfolio that --
 9 that sort of out of balance on the risk side.
 10 Q. Well, did you -- was there anything else
 11 you did to assess the risks of the portfolio future
 12 options --
 13 A. Sure.
 14 Q. Held by the Fund besides --
 15 A. We modeled the -- we modeled the portfolio
 16 and, you know, similar to an equity portfolio where
 17 you can use various models to understand whether an
 18 equity is fairly priced and it's a set of an
 19 appreciation target or so forth. We used options
 20 models to try to and -- under various scenarios,
 21 understand how the portfolio might perform.
 22 Q. Okay. And when you say -- when you're
 23 referring to modeling, in other words, did you use a
 24 computer program to assess the risk of the portfolio
 25 future options?

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1 A. Yes.
 2 Q. Okay. And was that computer program
 3 called OptionVue?
 4 A. Yes.
 5 Q. Was there any other computer program that
 6 you used for that purpose?
 7 A. That's the --
 8 Q. OptionVue --
 9 A. That's the only option pricing modeling
 10 software that I used.
 11 Q. Okay. And you used OptionVue on --
 12 throughout the August 2013 through February 2017
 13 time period?
 14 A. Yes.
 15 Q. Okay. Could you describe OptionVue for
 16 me?
 17 A. I -- I don't know as a basis on your
 18 familiarity with options modeling software, but
 19 it -- it has -- again, in my somewhat limited
 20 experience with watching other options modeling
 21 software, I would say that OptionVue has all the
 22 basic elements of the ability to model pricing
 23 behavior based on several different options pricing
 24 models, including the most famous Black-Scholes, but
 25 others, as well as being able to model changes in,

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1 again, a skew that I talked about where different
 2 options, series, expiration series, strike prices
 3 can change independent of a -- a general sense of
 4 what's happening in two options pricing in the
 5 marketplace.
 6 So, again, it's the tool I used. I'm
 7 reasonably sure that it has many of the same tools
 8 as other modeling software.
 9 I guess a good analogy would be, you know,
 10 if you say -- I mean, there's a car. Different cars
 11 have different features. Most cars have an
 12 accelerator, a brake pedal, a speedometer,
 13 et cetera. So it was a options modeling software,
 14 lots of different features.
 15 Q. Okay. To be able to use the OptionVue
 16 tool, however, you first had to input information
 17 into OptionVue on the -- on the trade that you made?
 18 A. Correct. I would have -- you would need
 19 to input whatever it is you want to model, correct.
 20 Q. And then based on the trades you inputted,
 21 the program would then determine the portfolio's
 22 holdings at a given point in time?
 23 A. Well, I'm not sure what you mean by
 24 determine the holdings. But if you input a
 25 portfolio, you could then use the software to do all

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1 sorts what-if scenarios, modeling, calculations on
 2 various attributes to the portfolio.
 3 Q. Well, meaning with respect to determining
 4 the portfolio's holding, if you enter a bunch of
 5 disparate trades with the -- with the program based
 6 on the aggregate that information on a -- on a --
 7 and informing of the value of -- of those holdings?
 8 A. Sure. Now, again, it would -- this is a
 9 modeling software, so it's telling you a value based
 10 on whatever assumptions you would like it to model.
 11 So -- and what time frame and what expiration series
 12 and so forth. So -- so it's not a -- it's not a
 13 artificial intelligence or ammo of any kind. It
 14 tells you what you ask it.
 15 Q. Right. So based -- based on the trades
 16 that were -- were entered into the program,
 17 OptionVue could estimate future values of the
 18 portfolio at different time horizons?
 19 A. Yeah. Again, not solely dependent on
 20 trades or positions, but on assumptions that the
 21 operator -- again, it's tools. It's a golf club,
 22 not a golfer. So it's -- it's the trader telling
 23 the program, Here's what I'm holding. Here's my
 24 expectation about volatility. Here's what time
 25 frame I'd like to look at. And then it would give

| | |
|--|--|
| <p style="text-align: right;">Page 37</p> <p>1 you an estimate of what might happen to options 2 prices over that period of time. 3 Again, similar to equities where you're 4 going to create a discounted cash flow model, if 5 that's what you're using, that's a common one, about 6 what might happen, stock prices in the future. 7 Maybe -- maybe its a good model, maybe it's not. 8 Q. Okay. Right. So then, I guess, make sure 9 I understand you. So the OptionVue could estimate 10 future values of the portfolio at different time 11 horizons based on assumptions about price of the 12 options, underline asset, in this case, the S&P 500 13 futures index contracts and -- as well as option 14 volatilities? 15 A. Yes. 16 Q. So it's based on those assumptions -- 17 A. That's -- that's correct. But, again, 18 it's -- it's a model, and often pricing is 19 ultimately determined by agreement between a buyer 20 and seller, an exchange. And, again, similar -- 21 similar equities, models to models, and prices 22 determined in an auction environment. So -- so 23 that -- and that's the caveat that I always 24 understood in using models as a tool. 25 Q. Did you use OptionVue to help you select</p> | <p style="text-align: right;">Page 39</p> <p>1 A. Well, again, I -- early on prior to the 2 formation of mutual fund, I traded the strategy 3 where -- in a commodity pool. And at that time I 4 developed a series of really of operating 5 parameters, which later became ways to control risk. 6 You know, it's -- it's hard to sometimes decouple 7 risk from opportunity, because they go hand in hand, 8 and it's balanced. So these are operating 9 parameters designed to allow a -- a reasonable 10 greater return, as well as trying to control 11 volatility and risking the Fund. So these suites -- 12 or this suite of metrics included things like 13 looking at how many positions we had on a normalized 14 and size would be column and scope. So in other 15 words, positions per million dollars is how we 16 normalized it. Obviously, twice as many positions 17 come. Twice the size is essentially the same level 18 of position of funds, so we normalized it. 19 We identified, as you may be familiar, 20 when you trade a derivative security like this, we 21 traded at the CME. Our clearing brokers required a 22 collateral department, or collateral deposit to 23 secure the potential risk in the portfolio. And, 24 again, that's called margin. 25 Margin has a different connotation</p> |
| <p style="text-align: right;">Page 38</p> <p>1 which options to buy and sell? 2 A. I did. 3 Q. Did you use OptionVue to forecast possible 4 future values of the options portfolio held by the 5 Fund? 6 A. Again, I used it to model what might 7 happen, if a given set of assumptions came to pass. 8 Q. And you did that in OptionVue to assess 9 the risk of the options portfolio held by the Fund? 10 A. That was one -- one thing I used OptionVue 11 for, yes. It was not primarily a -- the primary 12 risk management tool, but it was an important tool 13 that I used to assess risks. 14 Q. All right. So let me just break that down 15 a little bit. 16 OptionVue -- OptionVue was an important 17 tool that you used to assess risk to the Fund, but 18 it was not -- not the primary tool? 19 A. Yeah. I wouldn't say it was the primary, 20 because we used -- as I had mentioned, we used a 21 whole suite of indicators and metrics. OptionVue is 22 certainly an important model of how the portfolio 23 might perform, but not the only thing that I used. 24 Q. Okay. What's the other suite of metrics 25 that you're talking about?</p> | <p style="text-align: right;">Page 40</p> <p>1 sometimes in the securities business. But the 2 margins are collateral deposit to the secured risk, 3 protect the broker from risk so we wouldn't be -- we 4 had -- we monitored and had limitations on the 5 amount of the funds capital we were willing to 6 devote to this collateral requirement. 7 And -- and, again, the -- the broker 8 standard requirements are a very good risk tool, 9 because it's a very sophisticated algorithm. They 10 run a Monte Carlo simulation. And so we -- I'm not 11 always a very good risk measure for that reason. 12 This was more sophisticated than -- than a simple 13 options pricing model. It measured different 14 scenarios around price and volatility and -- and 15 determined a bond amount necessary to secure the 16 portfolio. 17 So we used the position sizing. We used 18 margin. We used open option premium. One of the 19 things that I -- I learned in turn -- in the type of 20 options spread and option training I do is that 21 volatility's very important. Many of the Greeks 22 contributed in many different ways, and this is the 23 market groups. All the Greek values change. So I 24 tried not to rely on any one specific Greek, and 25 instead we monitored our -- the total value of our</p> |

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1 open option premium. That was basically the sum
2 total of the interaction of all the Greeks on the
3 portfolio, and what's at risk was -- was inherent in
4 the position. So those are the three legs on the
5 stool: Positions, margin, open option premium.

6 Later on in running the mutual fund, the
7 advisor and I agreed to -- begin to monitor just
8 simple changes. We did not ask the value of the
9 Fund, and to react to certain levels of changes
10 drawn on from there.

11 Q. Any of the risk metrics that you just
12 described that -- or sort of you were saying are
13 separate outside of OptionVue, did you use any of
14 those risk metrics to stress test the portfolio?

15 A. No. The -- the -- those are metrics that
16 intended to be, you know, end-of-day values. You
17 know, we didn't use a value at-risk calculation,
18 but -- but a similar scenario where you could take a

19 snapshot of the portfolio and identify whether
20 this -- whether the portfolio was in a potentially
21 risky situation based on those values. The stress
22 testing I did with -- with the OptionVue software.

23 Q. Stress testing you did exclusively through
24 OptionVue, correct?

25 A. Yeah. I mean, again, when you talk about

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1 stress testing and modeling, that was my modeling
2 tool, so that's what I did.

3 Q. Did the risk -- the risk metrics that you
4 just gave an overview of, did any of those provide
5 information about either potential future losses or
6 about how the portfolio would perform under certain
7 market conditions?

8 A. Yeah. I think all of them, one way or the
9 other were designed to do that. In other words,
10 each of them were a measure of the current
11 elevated -- elevated -- the current level of risk in
12 the portfolio. So if you -- if you're looking at
13 these metrics and they're at the low end of the
14 scale, then -- then you can have some confidence
15 that the moving forward risk in the portfolio is
16 lower than if they're right at the top of their
17 scale, which the scales were driven by my experience
18 and the advisor's experience and the Fund's
19 performance and its performance relative to the
20 levels he's indicated.

21 So they -- they weren't modeling tools,
22 but they did certainly indicate whether there was --
23 to what extent there was an elevated risk in the
24 portfolio on any given day. And if there's an
25 elevated risk, then moving forward, you're -- you're

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1 likely to have a higher possibility of loss than if
2 they're a reduced risk. That's how their design
3 image is.

4 Q. But the risk metrics would inform you if
5 there was elevated risk present in the portfolio,
6 but they -- did they tell you whether -- based on if
7 the market changed in certain ways, whether --
8 what -- what -- how that risk might change in one
9 direction or the other?

10 A. They -- they didn't, but if the market
11 changed, then I would expect to observe that the
12 levels indicated by those metrics will also change.

13 Q. So those metrics, those risk metrics
14 you're talking about described or purported to
15 capture what the existing risk level in the Fund was
16 as opposed to what the -- what risk might be
17 presented based on changes in market conditions; is
18 that right?

19 A. Correct.

20 Q. I want to talk about -- let's go back
21 to -- and I appreciate you walking me through that.
22 With respect to stressing the portfolio in
23 OptionVue, let's circle back to that topic now.

24 And when you say stressing the portfolio,
25 we're referring to, you know, considering --

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1 consideration of hypothetical scenarios, such as an
2 increase in the S&P 500 that might cause losses or
3 gains and examining the magnitude of those losses or
4 gains from that market movement; is that right?

5 A. That's fair.

6 Q. Okay. So you used OptionVue to stress the
7 futures options portfolio. What exactly were you
8 stressing for? Can you walk me through what you
9 were -- what your -- the nature of your stress
10 testing?

11 A. Sure. So -- so typically an important
12 thing to note is the stress test -- the actual
13 attributes to the stress testing that I did were
14 based both on whatever the market conditions were at
15 the time. That's the extreme example from -- from
16 what recent history is. You would do a different
17 price extension.

18 In other words, if I wanted to look --
19 well, a couple characteristics. So the stress tests
20 are dependent on what are the market conditions and
21 what's the portfolio. So if I've got a large
22 concentration of options in expirations three months
23 from today, then I'm looking at what might happen
24 over the course of three months, and do I need to do
25 something about this under various scenarios. Then

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1 I consider what -- what's the current market
 2 condition. Are we in October of 2008? Are we in
 3 March of 2020? Or are we in January or
 4 February 2017. Very, very different market
 5 conditions.
 6 So in March of 2020, since it's fresher
 7 in -- in our memories, it would be very reasonable
 8 to say, I better find out what's going to happen
 9 to -- if the market is limit down to 7 percent at
 10 the open tomorrow. In February of 2017, a 7-percent
 11 move. That's a reasonable year out based on
 12 voluntary -- volatility conditions.
 13 So, first, I would try to assess the
 14 volatility in the marketplace largely based on pure
 15 math about how volatile the market has been and the
 16 calculation. In fact, it gets done by -- by index
 17 as you can look up or you can do it yourself as well
 18 easily. So what's the volatility conditions in the
 19 market? How's it behaving? Is it flat? Is it
 20 trending higher? Trending lower? What's it doing?
 21 And I would then try to make a determination
 22 about -- then I would look at the portfolio and say,
 23 Where is my risk? What expiration period? How
 24 spread out am I? Where do I need to look? How far
 25 do I need to extend price? Or do I need to do a

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1 volatility section?
 2 So a lot of environmental considerations
 3 and some -- some judgment on my part as well about
 4 how to stress the portfolio with some areas to apply
 5 to it. I would plug those scenarios into the --
 6 into the OptionVue model. It would give me results.
 7 Again, the results would be on multiple time frames.
 8 I would use my experience and judgment to evaluate
 9 those results, A, from a pure litmus test. Is that
 10 making sense? Is the model behaving correctly? Is
 11 there -- is there a hiccup in it somewhere? Is this
 12 reasonable based on real world experience? And
 13 based on the sort of digestion of all these factors,
 14 I would decide whether or not there was a need to
 15 make some sort of risk adjustment.
 16 I did the same thing in terms of entries
 17 and in terms of considering trades. Only the trade
 18 scenario was less about risk and more about if I put
 19 this on, what are the circumstances under which it's
 20 gonna make money? Is it a reasonable trade? What
 21 does it do to the portfolio profile? So -- so
 22 everything I've described to you in a little bit of
 23 a lengthy manor is a decision process of how I use a
 24 tool to help me make a judgment out of what to do.
 25 Q. So the scenario that you were -- you said

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1 you were plugging into OptionVue or considering in
 2 OptionVue, those scenarios were -- were some
 3 combination of price -- price -- potential price
 4 movement, volatility, and a particular time horizon;
 5 is that -- is that right?
 6 A. Correct.
 7 Q. And so were there -- were there scenarios
 8 that -- you know, involving those three factors that
 9 you typically considered in stressing the portfolio?
 10 A. I mean, there's some generic scenarios. I
 11 think, you know, when I would explain to people what
 12 I was doing, sometimes it's hypothetical, so I throw
 13 out numbers. But they really -- as I said, it
 14 didn't make a lot of sense to stress a portfolio
 15 three months out, if I didn't have options three
 16 months out. It didn't -- it didn't make sense to
 17 stress a portfolio in a very low vol environment for
 18 a 10-percent move. It didn't make sense to stress a
 19 high volatility environment for only a 10-percent
 20 move.
 21 So if -- if there were -- you know, in
 22 a -- in the average market, you know, I would fire
 23 up OptionVue. It actually gives you five different
 24 time frames. I can adjust those or take them. But
 25 it was really fairly market dependent.

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1 Q. You mentioned that there were -- when you
 2 were describing in that -- in that response, you
 3 mentioned when you're describing how to stress the
 4 portfolio that, you know, there were occasions when
 5 you threw out numbers. Can I focus on that for a
 6 second? When -- when you're -- when -- who did you
 7 mean when you're describing that portfolio to whom?
 8 A. So during -- during my time managing the
 9 Fund, the advisor asked me to, from time to time,
 10 answer questions about how this whole thing worked.
 11 It's a fairly complicated subject for many, so we
 12 held -- I think you're probably aware. We held
 13 some -- some calls in which I took questions and
 14 answers about how was the Fund positioned at that
 15 particular time? What was I looking at? What was I
 16 doing? Lots of calls, no real set script or agenda,
 17 then give a general overview of what was going on in
 18 the Fund.
 19 And I would take questions, and from time
 20 to time, people would ask about -- you know, about
 21 risk and about what I did to look at risk. It
 22 wasn't really common, but it -- you know, in terms
 23 of the number of calls and how often those questions
 24 came up, but they did come up.
 25 Oftentimes they were more generic

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1 questions about how do you manage a portfolio like
2 this, and I would explain or what's the strategy.
3 Much more common really to describe the strategy as
4 you started your inquiries with regard to the call
5 strategy, put strategy. As I mentioned, that's a --
6 you know, that's a good way to carve it up to help
7 people have a more generic kind of understanding of
8 what's going on.

9 Q. Okay. So these -- these -- half these
10 calls here that you mentioned, are these -- what --
11 you know, have they been referred to as open house
12 calls? Are you familiar with that -- that name for
13 those -- those calls?

14 A. Yeah.

15 Q. And these were -- these were telephonic
16 calls in which you -- you gave an overview of the
17 strategy at a given time, and answered the questions
18 from interested financial advisors; is that right?

19 A. Yeah. I mean, you know, I have a -- to
20 this day, honestly, I have a limited -- limited
21 understanding of -- really of the persistence of the
22 advisors to say, Hey, look just give them a call.
23 We're going to bring some financial advisors in and
24 ask them questions about options. It's not a
25 subject everyone's comfortable with. So -- so I

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1 did. So I -- you know, like I said, I have a
2 limited understanding of the audience other than I
3 was told they were financial advisor. I think
4 that's true. And I got on the phone when I was
5 asked to.

6 Q. Okay. And in that response, sir, you said
7 that you were asked by advisors to -- to give these
8 presentations to financial advisors. Did you mean
9 wholesalers? Did you?

10 A. No, I'm sorry. I'm using the advisor in
11 my terminology for Catalyst. I'll start over again.

12 Catalyst asked me to get on calls with --
13 as I said, I -- I never saw an invitation list. I
14 have no reason to think otherwise. But I was told
15 this was a collection of financial advisors. I
16 don't know how they were invited or who was invited
17 or what. I was told that that's the audience, so
18 that I could be, you know, a little more comfortable
19 with being transparent about what I did, and, for
20 example, if it were direct retail investors.

21 Q. But you understood the financial advisors
22 that participated in those calls were, in turn,
23 making investments on behalf of investors; is that
24 right?

25 A. Honestly, I don't know very much about the

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1 financial advisor community. I don't know whose got
2 discretionary authority or what. It certainly
3 seemed reasonable. All I knew is that -- the
4 important fact to me was these guys were -- were
5 purported to be sophisticated people who
6 understood -- honestly, you know, they understood to
7 read documents and disclosure statements and to ask
8 questions if they weren't certain. And that's how
9 I -- again, that's how I managed the transparency of
10 my -- my remarks. But, honestly, I don't know what
11 they did with client money or what -- what might be
12 going on behind the scenes.

13 Q. Sure. But you were -- you were portfolio
14 manager of a public mutual fund. And you had -- you
15 had a general understanding of what a financial
16 advisor does, right?

17 A. Sure.

18 Q. And so these -- these calls that you
19 mentioned, how often did you participate in -- in a,
20 you know, so-called house call of that nature?

21 A. That varied over time. I want to say
22 there was a time -- and the genesis of this was that
23 some of the wholesalers were -- were becoming a
24 little more insistent in their asking for some
25 explanation. I was pretty well known for -- for not

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1 wanting to be involved in sales marketing. I enjoy
2 what I do as a portfolio manager. So I began to
3 decline to take phone calls. So the compromise
4 between myself and Catalyst was that they would hold
5 periodic group calls to accomplish some of the
6 Q and A.

7 At any rate, again, the frequency varied
8 once a month, twice a month, somewhere in that
9 neighborhood for most of the time that I was doing
10 them, best of my memory.

11 Q. Okay. So when you -- a few answers prior
12 when you mentioned that you threw out numbers on
13 those house calls related to the scenarios that you
14 examined an OptionVue, what were you talking about?
15 What numbers did you throw out in the -- in the
16 context of one or more of those open house calls?

17 A. So what -- again, you know, a lot of calls
18 I have not done any particular review. I've heard
19 some sound bytes played back to me in this process,
20 but I've not done a thorough listen myself. A lot
21 of calls. A lot of different questions and answers.

22 I remember talking about the risk metrics,
23 as I explained them to you. In particular, the open
24 option premium number, at the time, of 80 percent
25 that we controlled to or tried to control to.

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1 Meaning, that was something that, you know, if we
 2 hit that number, we've got to take some action, or
 3 at least consider what action to take. But that was
 4 a pretty strict number for us to react to. I talked
 5 about stressing volatility in the Fund, particularly
 6 on the down side. Talked about, you know, taking
 7 some volatility through these assumptions.
 8 I think I talked about multiples of -- of
 9 price movement, 5 and 10 percent maybe. But, again,
 10 my memory is not great. Lot of calls, lot of
 11 different questions. And -- and many of the
 12 questions were around strategy, some on risk. And
 13 sometimes I think those numbers change.
 14 Q. All right. Well, putting -- putting aside
 15 what you -- what you may or may not have said on a
 16 particular call, let's focus on what -- what you, in
 17 fact, did, what your practice was in stressing the
 18 portfolio. And so were there -- again, we talk
 19 about the fact that, you know, for a particular
 20 combination of time horizon and -- and volatility
 21 change, OptionVue would compute and display the
 22 option portfolio value for a range of prices
 23 specified by the user; is that right?
 24 A. Yeah. It would -- it would model --
 25 again, it would model what the portfolio value might

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1 look like if all the assumptions came through. And,
 2 again, my experience is that at the end of the day,
 3 it's -- it's an option process in terms of option
 4 prices. So the option models are very useful, but
 5 they're -- they're -- they're not set in stone. So
 6 you have to have some judgment over time to
 7 understand how to use them, like any -- any model.
 8 Q. But were there -- were there particular
 9 scenarios, default scenarios that you considered
 10 when stressing a portfolio in the ordinary course of
 11 managing the Fund?
 12 A. There were default scenarios that the
 13 software would open up to, and that was typically
 14 determined by the furthest out expiration in the
 15 portfolio. But that's -- again, that's something I
 16 adjusted. I would typically look at individual
 17 expiration periods. I would -- very, very
 18 importantly, in OptionVue, it will actually compute
 19 the -- the current market volatility and give you
 20 a -- some stats on that, like a one-standard
 21 deviation move or a two-standard deviation move.
 22 Those are very helpful in understanding the current
 23 environment in a snapshot. Oftentimes I would look
 24 at them.
 25 Again, always -- with any model, I think

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1 you have to do kind of a sniff test, I would call
 2 it. Say, Does this make sense? Does it got the
 3 right data? Can I check an ultimate source? So --
 4 so default scenarios really depended on market
 5 conditions. Again, not -- some of the numbers I
 6 threw out in the calls were based on, you know, over
 7 a five-year period of time. Options volatility is
 8 15 to 20. That means that a 5- or 10-percent move
 9 is a pretty good move on a 90-day period of time,
 10 and 90 days is a -- is a good portfolio. You know,
 11 that would be a typical excursion. We would -- we
 12 would -- the positions on as far as 90 days out. So
 13 it was a good example to use, trying to give people
 14 a sense for how I managed the Fund. But on any
 15 given day, I had to be a little more precise about
 16 where am I living right now? What's the portfolio
 17 look like? What's the market look like.
 18 Q. Did you -- did you stress the portfolio in
 19 OptionVue on a daily basis?
 20 A. I opened up OptionVue every day. There
 21 were some days in which -- not frequent, but there
 22 were some days, especially in a low volatility
 23 environment, where you could tell, I mean, the
 24 market was mostly unchanged. Yesterday the NIX was
 25 mostly unchanged. OptionVue is not going to give

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1 you a whole lot of different -- you open it up, you
 2 look at it, and there wasn't a need to go through,
 3 what I would call, a rigorous stress test with ten
 4 different scenarios.
 5 But I opened it up when I looked at the
 6 curve, and I understood where the market was and
 7 used my judgment about what sort of in-depth stress
 8 testing I needed to do. But the portfolio, you
 9 know, graph was -- like I said, I didn't -- I didn't
 10 come to work on opening a budget.
 11 Q. And so, you know, whether you did in-depth
 12 stress testing or you were opening OptionVue, and --
 13 and you're looking at the curve, let me -- let me
 14 stop there.
 15 You mentioned, you know, looking at the
 16 curve or the graph in OptionVue. What are you
 17 talking about? What is being graphed? Or what
 18 curve are you referring to?
 19 A. It's the model prediction of -- of, in
 20 this case, if I open up OptionVue -- which I did,
 21 every day I looked at it. And, you know, the extent
 22 to which I did a stress test, again, depending on
 23 the environment. But I could look at it and
 24 immediately see under -- under whatever assumptions
 25 it opened up, what the -- what the portfolio value

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1 would look like across different time horizons going
 2 forward.
 3 Q. Okay. And if you opened OptionVue -- come
 4 into work, first thing in the morning, you open
 5 OptionVue, what -- where is OptionVue picking up
 6 from? What is it going to display to you?
 7 A. Depends on what the portfolio looks like.
 8 Meaning, it will cue -- it's the follow-up cue off
 9 of typically the furthest out expiration in the
 10 portfolio. And, again, sometimes that -- that's the
 11 right thing to look at, sometimes not so much.
 12 So, again, I would have to take a look --
 13 and as I said, you know, that's -- that was my
 14 process. I would certainly take a look at it. But
 15 I would know coming in, in the morning, you know,
 16 what's our environment. You know, again, are we
 17 March of 2020? Are we in February of 2017? Or are
 18 we someplace in between? And that would determine
 19 how much time I put into, all right, am I managing
 20 risks today? Am I putting on new positions? Or --
 21 or maybe I'm going to let time decay work for me,
 22 and today's a very good day to do very little or
 23 nothing.
 24 Q. One of the things that OptionVue would
 25 display would be the impact on the -- on the

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1 portfolio from increases and decreases in the level
 2 of the S&P 500 Index; is that right?
 3 A. Yeah, the OptionVue screen would show you
 4 plus or minus, wherever you want to look really, in
 5 terms of S&P pricing, yes.
 6 Q. Okay. And where would you look in terms
 7 of S&P pricing? Were there -- were there particular
 8 percentage increases or decreases in the S&P 500
 9 that you were -- you were examining and considering
 10 in the ordinary course?
 11 A. Well, I don't know if there is an ordinary
 12 course. In the -- the -- the current market
 13 conditions and portfolio composition are absolutely
 14 what drives that. Like I said, if I've got a big
 15 chunk of positions 90 days out, I'm looking 90 days
 16 out. If I have nothing out in 90 days, I'm probably
 17 not looking out 90 days, so depending on the
 18 portfolio composition. And then, again, if we're in
 19 a volatility environment where the likelihood of a
 20 5-percent move in a week is one in a million, then
 21 I'm probably not looking at that scenario. So it's
 22 absolutely market environment and portfolio
 23 composition driven. And there's a big, big chunk of
 24 my judgment and experience rolled into that as well.
 25 Q. Um --

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1 A. It's simply not a mechanical system.
 2 Q. All right. So with respect to increases
 3 and decreases in a level of S&P 500 Index, are you
 4 saying that what you looked at just changed from
 5 day to day, you didn't have any particular scenarios
 6 that you were looking for?
 7 A. It didn't necessarily change day to day,
 8 because my experience is two things. Market
 9 environments don't change radically from day to day.
 10 In fact, it's rarely changed radically from
 11 day to day. Every once in a great while they do,
 12 but it's not the basic scenario. So in a particular
 13 market environment, you kind of expect that to
 14 persist.
 15 And so if -- if there's a low vol or a
 16 high vol -- volatility market environment, then I
 17 would start looking at similar things every day
 18 until either the weight of evidence or the -- the
 19 statistics in marketplace would cause me to say,
 20 Hey, I better -- I better throw a different scenario
 21 in here now, because things are different. So -- so
 22 not every day. But -- and, again, the portfolio as
 23 well. Portfolio didn't change dramatically every
 24 day. But there were ebbs and flows in the material
 25 over time.

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1 So on any given day, I would have to
 2 assess, all right, you know what, I've -- I've been
 3 scaling into positions in that 90-day expiration.
 4 I've got -- I've got what I would consider a full
 5 position out there. I've got to change some of my
 6 time frame scenarios. So, again, it's a very, very
 7 fluid situation. And it is a lot of analytics to
 8 determine what to do, but a lot of judgment in terms
 9 of how to use models and tools.
 10 Q. Well, just sticking with -- with price for
 11 a moment. The scenarios that you examined, did they
 12 include 5-percent and 10-percent increases and
 13 decreases in the level of the S&P 500 Index?
 14 A. Yes, I -- I recall on a couple occasions
 15 talking about those levels. Again, not wanting to
 16 in -- I don't know if it's effective in answering
 17 questions to go where my answer's designed to be a
 18 comprehensive and detailed manual for how I manage
 19 the Fund. It's -- again, it's not a mechanical
 20 fund. So those are very good approximations of the
 21 type of scenarios I looked at in a -- in the -- the
 22 average scenario for the Fund, but, again, it's only
 23 an average.
 24 So it's -- it's not something I did in the
 25 low volatility environment, nor high volatility

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1 environment. It's something I did maybe in an
2 average environment where the Fund had positions
3 where that was appropriate. So that was a good --
4 you know, I think those were good tools to explain
5 to people in a general sense what I was doing. But
6 on any given day, it really depended on the position
7 of the Fund and the market conditions.

8 Q. All right. So depending on the position
9 of the Fund, depending on the current market
10 conditions, you may or may not have examined what --
11 what the impact to the portfolio would be from --
12 from a 5-percent and 10-percent increase in the
13 S&P 500?

14 A. Yeah, if there was a -- if there was a
15 scenario where I felt like a -- looking at 5 or
16 10 percent out over -- you know, over a week. Did
17 that make sense? Did the information tell me
18 anything?

19 There was some -- there were times when
20 that's not a scenario that's -- that's informative
21 to me. And there were many times when it was a
22 scenario that I didn't look at. But -- but, again,
23 in aggregate, if you want to explain something to
24 someone and use some general terms to give them a
25 feel for what you're doing, those are good numbers.

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1 Q. But if I understand your testimony, those
2 are not scenarios that you considered every day?

3 A. That's correct. I didn't consider those
4 precise scenarios I wrote every day, no.

5 Q. Okay. Were there any -- were there any
6 scenarios, whether on the price side or the
7 volatility side that you considered every day or on
8 a routine basis?

9 A. Yeah. I -- again, I've always considered
10 price and volatility excursions that I felt were
11 reasonable based on current market environment,
12 current fund portfolio. Am I experienced with how
13 options and -- options in my particular -- options
14 spread behaved in those scenarios. So -- so, again,
15 I apply my judgment in how I use the tool, which --
16 which plug to pull out of the bag based on which way
17 the wind was blowing and how long a drive I needed.

18 Q. Yeah, and I hear you. But you're saying
19 what was reasonable or what was judgment. And I'm
20 trying to get a better sense of that. So was there
21 a club that you pulled out of your bag every day or
22 almost every day that you used, you know, that club
23 being the analogy for a scenario, whether it be a
24 price increase or decrease scenario or a volatility
25 increase or decrease scenario? Or were there -- was

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1 there a particular club or particular clubs that
2 every day you reached into your bag and you pulled
3 out and you used in stressing the portfolio? That's
4 what I'm asking.

5 A. Yeah, I think the -- the better way to put
6 it is every day I pulled out a club, and every day I
7 had my bag. Every day I had a swing at golf. I had
8 my bag and I had a club, and I pulled one out that I
9 felt was the right one for the situation.

10 So if you -- if you ask me -- again,
11 I'm -- I'm a little uncertain why I'm going down the
12 golfing analogy, because I don't golf. But I know
13 that, you know, I -- when I step up to the tee, I'll
14 use a driver of some kind, I guess. But depending
15 on the hole, depending on the -- the conditions, I
16 might use a different driver than the day before.

17 And if someone asks me, I would say, Yeah,
18 you know, a lot of times this one's -- this one's a
19 good one. And just to have you understand that I
20 use the driver when I'm off the tee.

21 Q. Okay. Well, I'm not going to go down the
22 golf analogy further. It sounds like neither one of
23 us are big golfers. But focusing -- what I really
24 want to drill down on, sir, is whether there were
25 particular percentages. We talked about 5 percent,

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1 10 percent, and upper increase or decrease in the
2 S&P 500 Index. And on the ball side, were there
3 particular point increases or decreases that you
4 considered on a daily basis in OptionVue?

5 A. I mean, the best answer I can give you
6 is -- is no. At the risk of being overly
7 repetitive, I don't mean to be, it's -- it's
8 absolutely -- I mean, I don't think it would serve
9 anyone to have a mechanical locked in set of
10 parameters like that that don't make sense in a
11 particular environment.

12 Like I said, if -- if I said to you, I'm
13 gonna stress a 1-percent move every day, and all of
14 a sudden we're in COVID, that would be foolish.
15 That would be the absolute wrong stress test to use.
16 And if I said to you, Well, we just came out of
17 COVID, I'm stressing 5 percent down tomorrow, well,
18 then that would be a treasure the whole time. I
19 would never look at anything. So you -- I think
20 it's -- as a portfolio manager, it's irresponsible
21 not to select the right -- the right methodology.
22 At least to the best of my experience, the right
23 methodology to use, given the portfolio composition,
24 given the market environment, and that's what I did.

25 Q. Okay. So to circle back, you gave me --

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1 you gave me your explanation for -- for why your
 2 answer's no. But the answer's no, if I understand
 3 your testimony. There was not a -- there were not
 4 particular increases or decreases in the
 5 S&P 500 Index or a particular point decreases or
 6 increases in options volatility that you considered
 7 regularly or on a daily basis?
 8 MR. KOPECKY: Objection. Form.
 9 Foundation. Mischaracterizes the testimony. And
 10 it's been asked and answered. But particularly with
 11 the use of particular, because there was always a
 12 particular number, just not the same particular
 13 number the way I understood.
 14 Go ahead and answer then.
 15 A. Sure. So, again, I mean, I -- I have to
 16 give you some context about -- around the answer. I
 17 don't want to be misinterpreted. Each day I would
 18 use --
 19 BY MR. FOSTER:
 20 Q. Yeah, if I could stop you there.
 21 I think you gave me the context, and I'm
 22 asking if you can answer the question yes or no. If
 23 you can't, then I guess you can't. So my question
 24 would be --
 25 A. I --

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1 Q. My question would be -- and I'll -- let me
 2 know if you want me to restate it.
 3 My question would be, yes or no, were
 4 there particular increases or decreases in a level
 5 of the S&P 500 Index that you considered every day
 6 in -- in looking at the portfolio in OptionVue?
 7 MR. KOPECKY: Same objections.
 8 A. And I -- I have to repeat the same thing.
 9 I -- you know, I -- honestly, I want --
 10 BY MR. FOSTER:
 11 Q. Don't repeat -- don't -- sir, don't repeat
 12 what you said.
 13 Just are you able to answer my question,
 14 yes or no?
 15 A. Mr. Foster, I -- I -- again, I apologize.
 16 I'm doing my best to be cooperative, but I cannot
 17 take the chance that I give you a misleading sound
 18 byte kind of response here when your question
 19 requires the context I've given you, and I have to
 20 repeat that.
 21 Q. No, you don't have to repeat it, because
 22 I've -- you don't have to repeat it, because I've
 23 heard it. I've heard it several times now. And --
 24 but what I haven't heard is an answer to my
 25 question, which is whether or not -- so I have the

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1 context, but it's simply whether you did or did not
 2 do something. So did you look at particular
 3 increases and decreases in the level of the
 4 S&P 500 Index in OptionVue every day --
 5 A. Every day -- every day I did look at
 6 particular increases and decreases, and --
 7 Q. Okay. When I say particular -- when I
 8 just say particular, I mean the same. So a common
 9 percentage. So 5 percent -- let's be very specific.
 10 Did you, on a daily or regular basis,
 11 examine a scenario that included a 5-percent
 12 increase or decrease in the level of the
 13 S&P 500 Index? Did you do that in OptionVue either
 14 on a day -- every day or almost every day when you
 15 were stressing a portfolio?
 16 MR. KOPECKY: Objection. Form.
 17 A. On some days, that -- the level that I
 18 looked at was 5 percent. On other days, it was not.
 19 BY MR. FOSTER:
 20 Q. And what about the 10 percent level? Did
 21 you -- was that a level that you looked at every
 22 day?
 23 A. On some days, 10 percent was the level --
 24 level I chose, because it was the appropriate one.
 25 But on other days, it was not.

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1 Q. Okay. What -- you said some days. Are
 2 you more or more often than not? Are you able to --
 3 are you able to tell me how often you looked at
 4 either the 5-percent increase or decrease or the
 5 10-percent increase or decrease in the level of the
 6 S&P 500 Index?
 7 A. I -- I can't speculate on a particular,
 8 you know, percentage of the time. Those numbers
 9 were the right numbers.
 10 Q. Were those numbers -- whether you were
 11 focused on them or not, were those numbers -- was
 12 that information graphically displayed on the
 13 OptionVue graph curve that you -- that was -- that
 14 was visible to you when you opened OptionVue?
 15 A. I'm not sure what you mean by whether
 16 those levels were graphically displayed.
 17 Q. Well, you open -- tell me, sir, what
 18 happened? You opened OptionVue, what -- what's the
 19 first screen that pops up when you open it?
 20 A. Well, the first screen that pops up is
 21 a -- I think OptionVue calls it a matrix. It's
 22 basically a, quote, listing of all the different
 23 markets and indexes and securities that I've
 24 selected to appear.
 25 Q. The matrix screen -- I'm sorry. The

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1 matrix screen is the screen that allows you to enter
2 information about trades that you've made or that
3 you're considering making; is that right?

4 A. No. The -- the initial screen you asked
5 about -- and I may be incorrect labeling as matrix,
6 but it's simply a listing of quotations, some
7 volumes test.

8 Q. How do you get to a screen that includes
9 the graph, the curve that you're referring to?

10 A. So if I -- if I wanted to look at options
11 related to any of the securities or instruments that
12 were on that initial page, I would click on it.
13 I -- you can click on the particular instrument. In
14 this case, it would be S&P futures.

15 Q. Okay. But would you -- would you view the
16 graph every day? Would you click on it every day?

17 A. Yes. Every day.

18 Q. Okay. When we're talking about increases
19 or decreases in the level S&P 500 Index or changes
20 in volatility, again, the -- when you're accepting
21 that -- those -- those factors, you're accepting how
22 they would impact at a given level, how they would
23 impact the portfolio, correct?

24 A. I'm sorry. Can you repeat that?

25 Q. Sure. The scenario -- on a day when you

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1 considered or examined, you know, what would happen
2 if the S&P 500 Index increased 5 percent, right,
3 what -- what you're -- what you're looking for is
4 how that move in the S&P 500 Index would impact the
5 portfolio holdings, the option futures holdings that
6 you -- were in the portfolio, correct?

7 A. Yes. So I'd look and see what, again, the
8 standard you asked about the -- what screen pops up.
9 Well, the screen would typically pop up with five
10 different time frames. And so I would look out
11 and -- and -- and the X axis, if you can visualize
12 this, was simply the price levels on the S&P. And
13 the typical pop-up screen, I don't know, I would
14 have to go in and set how wide an X axis I want it.
15 And, again, that would be dependent on how far out
16 the portfolio's positioned. So I could look at
17 whatever I wanted, and the X axis would basically --
18 S&P futures, front month futures pricing.

19 Q. What you're looking at is how -- how these
20 potential change -- how the potential change in
21 market conditions might impact the -- the value of
22 the portfolios, correct?

23 A. Well, I would look and see what the --
24 again, what -- what the curve looked like at various
25 points, plus or minus where the mark was today,

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1 pricing the S&P futures, yes.

2 Q. All right. But in looking at the curve,
3 what are you looking for? Are you looking for
4 anything in particular?

5 A. Well, remember, there's -- the default is
6 the five words. So I'm -- I'm first selecting which
7 of the five, if any of the five, make sense to me.
8 And each of them would have a different result or
9 different prices on the S&P and -- and would give me
10 a model value of where the portfolio might be at
11 that price. If nothing about the model inputs
12 change, which, you know, on its face, that's --
13 that's kind of an impossibility, because -- well, at
14 least I've never seen a market move without some of
15 the inputs to the model changing, sometimes pretty
16 dramatically. So snapshot of -- of five different
17 time frames, five different curves, as many prices
18 as I want to look at for -- for wherever the
19 portfolio might be, or where a particular expiration
20 series might be. Anything I want to look at.
21 Again, it's -- it's a tool with a lot of different
22 uses.

23 Q. Each -- each curve, each line, you mention
24 five lines, so essentially there's five curves by
25 default, correct?

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1 A. Correct.

2 Q. And each -- so each -- each curve
3 represents a range -- or forecasts a range of
4 portfolio values based on a range of -- of moves
5 in -- in -- or based on a particular scenario of
6 price and volatility, correct?

7 A. Yeah. I mean, maybe the technical
8 language you used isn't quite correct. But each
9 curve matches up a point of value of S&P price and
10 time. And, again, with the underlying assumptions
11 around skew and aggregate volatility, which are
12 either set by me or default to the model or some or
13 both.

14 Q. So each one of those curves represents a
15 particular scenario of time, volatility, and -- and
16 potential price increases, right?

17 A. Yes, or decreases.

18 Q. Or decreases. Right.

19 And so for each one of those scenarios
20 that the -- that the five lines depicted, did you
21 consider whether that scenario involved the loss of
22 more than 8 percent of the Fund's value?

23 A. Well, typically the first thing I did was
24 try to determine if I had the correct scenarios
25 displayed before just looking at them. Meaning, was

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1 I looking at the right time frames across those
2 curves? Did I have the scaling set so that I can
3 see, you know, the right range of S&P prices? And
4 then it gets back to what I've talked about. I
5 apologize for beating it to death, but it's just I
6 don't know how to explain what I did other than to
7 keep repeating what I did. And that is I'd take a
8 look -- and OptionVue helps you.

9 In other words, at the bottom of this
10 exact S&P prices, it will give you a display of
11 current market volatility and standard deviation
12 movement. First thing I have to view is double
13 check that it's got a reasonable input number to
14 display that. And then it gave me a decent guide
15 for price ranges. But, again, it's timed to it.

16 So I look at my portfolio. Say, where --
17 where are my positions? Where -- where is my risk?
18 Where is my opportunity? What time frame should I
19 look at? So I would then go in and adjust all of
20 those parameters to make sure that they were
21 reflecting something useful, some useful outputs. I
22 can't -- you know, my experience with this made it
23 at least a little bit easier to -- to come to that
24 point. But I can't just open up OptionVue and look
25 at something if it's not giving me useful

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1 information.

2 Q. Mr. Walczak, did you use -- did you ever
3 use the OptionVue software to estimate whether there
4 was a scenario that involved a loss of more than
5 8 percent of the Fund NAV?

6 A. Yes.

7 Q. How often did you do that?

8 A. Again, most every day. And I'm going to
9 qualify with most, because, as I said, in certain
10 environments, there was very little change
11 day to day. So if I saw something yesterday, I
12 could pretty immediately tell that nothing material
13 had changed. So I continue to act on whatever I had
14 seen. But for the most part, I looked each day, and
15 I -- I looked at that level that's a level that I
16 chose long ago and talked about both primarily in
17 terms of OptionVue.

18 And that's what OptionVue is -- is telling
19 me. Really the way I used it is what's the open
20 option premium value in the Fund? So I looked
21 for -- for scenarios where that 8 percent number was
22 triggered.

23 Q. Okay. So just so I -- I want to try to
24 really drill down on that to make sure that we're --
25 we're clear, that your testimony's clear. When you

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1 talk about, you know, that 8 percent number, that's
2 the number that you used, you used OptionVue to
3 estimate whether there was a potential -- whether
4 there was a scenario that involved a loss of more
5 than 8 percent. My question -- I said 8 percent of
6 the Fund NAV, but correct me if I'm wrong. When you
7 say 8 percent, what are you referring to? 8 percent
8 of what?

9 A. So I used the 8 percent option --

10 MR. KOPECKY: Sorry, I don't want to cut
11 you off. I just want to make sure we know in what
12 context you're speaking.

13 When he just answered your question, what
14 do you mean when he said 8 percent? What context
15 are you talking about? Is there a specific time?
16 You said 8 percent. You can ask him about that.
17 What he meant when he -- when he used the term then.
18 But let's not just generally decide that every time
19 he said 8 percent it meant the same thing. That
20 wouldn't be true.

21 MR. FOSTER: I'm not sure I understand
22 your objection, but I'll --

23 MR. KOPECKY: In what context do you
24 mean -- when are you asking, What did you mean you
25 used the term 8 percent? Like, you told us, I'm

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1 talking about 8 percent --

2 BY MR. FOSTER:

3 Q. Sure. I mean -- I mean -- I mean right
4 now. I mean when you just said that you knew that
5 that was the number you arrived at long ago. That's
6 the number that you -- you looked at that you --
7 that most every day you were looking and assessing
8 this 8 percent number. What -- 8 percent of what?
9 What are you talking about?

10 A. Yeah, the primary number I used, because I
11 felt -- you know, again, I've been using this for a
12 long time. It's a -- it's a good simple number that
13 doesn't involve lots of more complex calculations.
14 It's simply how much open option premium exists in
15 the Fund. And that means this is what you have to
16 spend in terms of fund assets to -- to go to cash
17 essentially.

18 And so the 8 percent number in OptionVue,
19 I used the setting that had OptionVue displayed a
20 value of options instead of P&L. The value of
21 options, and I looked -- you can always find the
22 scenario where there's an 8 percent loss on some
23 time frame or some pricing. So the question then
24 becomes: Is that even a scenario you should
25 consider? And, like I said, if you expect

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1 1987 Black Monday to happen tomorrow, then you
2 better be in treasuries all day long.
3 So you have to consider, again, based on a
4 marketing environment, what is likely. And that was
5 the judgment on my part about likelihood based on
6 market environment and based on portfolio
7 composition. So, sure, I would look in most cases
8 to see where there was an 8 percent potential. And
9 most of the time I could immediately throw that
10 scenario out the window and say, This is the one in
11 a hundred. And I'm not going to react in this
12 moment's one in a hundred, like --
13 MR. FOSTER: So we've been going about an
14 hour and 45. I don't know how you're doing, Ed, how
15 the court reporter is holding up. What -- what do
16 you think?
17 THE WITNESS: I could probably take a
18 bathroom break at this point.
19 MR. FOSTER: Okay. Let's do that. What
20 do you folks want? Ten minutes or so?
21 THE WITNESS: Sure.
22 MR. KOPECKY: How about let's stick to
23 the -- to the ten solid, and try to make -- try to
24 keep it that way. I was joking earlier that every
25 time we take a 5-minute break, it's 10. When it's

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1 10, it's 20. Let's -- let's say 10 minutes solid,
2 we'll be back?
3 MR. FOSTER: Sounds good.
4 MR. KOPECKY: All right. Thank you.
5 VIDEOGRAPHER: We're going off the record
6 at 11:22 a.m.
7 (Recess taken.)
8 VIDEOGRAPHER: We're going back on the
9 record at 11:34 a.m. Okay. You may proceed.
10 MR. FOSTER: Thank you.
11 BY MR. FOSTER:
12 Q. Mr. Walczak, a few moments ago, we were
13 discussing the fact you had a practice of looking in
14 OptionVue for an 8 percent figure. And I just want
15 to better understand what you're talking about, what
16 that 8 percent relates to. Is it -- is it a
17 8-percent decrease in the value of the options
18 portfolio? Is that what you were referring to?
19 A. No. When I -- when I look at OptionVue is
20 the value of the options position, and I'm looking
21 for a net short options value of roughly 8 percent
22 of the portfolio.
23 Q. And you mention an 8 percent as it related
24 to open option premium. Is that -- is that
25 something different, or is that the same thing as

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1 you just described?
2 A. That's the same.
3 Q. All right. So maybe just indulge me a
4 little more. Just -- when you say open option
5 premium, can you sort of break down, tell me,
6 explain to me what you mean?
7 A. So open means positions that are open, not
8 closed out. They're existing positions. And the
9 sum of the value of those positions, if they're
10 short options, which is the scenario we're looking
11 at, that means they have a negative value. It cost
12 money to close them out. When that value -- the
13 scenario I'm looking for is when that value is going
14 to be 8 percent or greater than the total assets in
15 the Fund.
16 Q. Okay. So does that mean you're looking
17 for a scenario where there's -- there would be an
18 8-percent drawdown of the Fund, or is that something
19 else entirely?
20 A. I thought over my experience that the two
21 were very similar, because it was typical for me to
22 enter positions, what's called an at even. Meaning,
23 I would spend a certain amount of money on the long
24 side of the position and take in a roughly equal
25 amount on the short side of the position so that at

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1 the end of the day, if there were -- if the Fund
2 were all in cash, and I put a position on it, you
3 would see a zero net open option premium. And if
4 that open option premium grew to 8 percent, that was
5 a pretty good approximation of decline in P&L on the
6 Fund. And as I said, for -- for risk control
7 purposes and for monitoring the Fund's posture, that
8 was a good aggregate, relatively simple to model
9 measurement that I used.
10 Q. Okay. So the -- the 8-percent drawdown,
11 when we were just talking about drawdown, what --
12 how do you define drawdown?
13 A. So the way Catalyst suggested that we
14 define it was 8 -- 8 percent change on a rolling
15 months basis, I think, is the way that they set up
16 the risk metrics.
17 Q. Okay. But in OptionVue, when you're
18 looking for 8 percent, if I understand it, you're
19 looking -- you were considering, you know, scenarios
20 that would result in an 8-percent negative net
21 decrease in -- in the value of the Fund, right?
22 A. I was -- I was looking for scenarios
23 that -- that would cause the Fund to have 8 percent
24 or greater in open option premium.
25 Q. But, again, how -- open option premium.

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1 How is that different than what I'm
2 saying? If I'm -- if I'm saying that you and
3 Mr. Walczak were looking or considering scenarios
4 that would result in a 8-percent decrease in the
5 Fund's NAV, am I wrong?

6 A. Well, all I can say is I didn't do fund
7 P&L calculations in OptionVue or at all for that
8 matter. So I can only look at the next day's print
9 and assume it was correct. Occasionally if it
10 looked off, I would raise a flag, but I didn't do
11 fund P&L coverages.

12 Q. But I think I heard you to say that the
13 8 percent open option premium would be -- would --
14 would translate -- would typically translate roughly
15 to -- in 8 percent. If it was in excess of
16 8 percent open option premium, that would translate
17 roughly to an 8-percent decrease in NAV?

18 A. Yeah, it should be somewhere in that
19 neighborhood. Again, because we entered positions
20 at zero. So, again, a lot of other things went into
21 NAV, but it was good portfolio management level risk
22 control I thought of at the time.

23 Q. Did OptionVue measure open option premium
24 as -- as a default setting?

25 A. It -- it measured the value of the

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1 positions that I entered, which were the positions
2 of the funds. It measured the current value based
3 on either a settlement price or it would take the
4 bid offer in marketplace and calculate the value of
5 the open option positions.

6 Q. Okay. So it -- would it calculate it for
7 you, or is this something you had to adjust or do an
8 OptionVue to measure open option premium?

9 A. Well, again, it goes back to -- I mean, it
10 would calculate it in -- in real time based on
11 whatever settings I put in, which there were a role
12 handful of settings about how you wanted to
13 calculate it. Because, again, even the model
14 recognizes that option pricing is based on an option
15 market. So you have to say, Do I want to take the
16 last price, trade it? Do I want to take the bid
17 price currently, the offer price currently, some
18 combination of all those things? So I happen to
19 choose the midpoint between the bid and the offer.
20 In those settings, OptionVue would add up all of
21 the -- the option prices in that aggregate value of
22 the portfolio in terms of open option premium.

23 Q. Okay. You identified a scenario that
24 involved a -- if I'm -- if I'm saying this right, a
25 net -- a net short open option premium value of an

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1 excess of 8 percent?

2 A. Well, as I said, every day I open
3 OptionVue, sometimes immediately see one of those.
4 And then I would have to decide whether that was a
5 reasonable scenario. As I said, if it -- if it was
6 a look if we decline 10 percent tomorrow, we would
7 be down 8 percent in the Fund, I would say, Well,
8 that's not meaningful to me. I'm not going to look
9 at that. So -- so that was how I used the model is
10 to identify meaningful scenarios based on market
11 conditions and further -- further construction.

12 And if one of those scenarios was in
13 excess of 8 percent, I would then figure out what's
14 the best course of action, sometimes nothing, but
15 what's the best course of action to take in light of
16 that identified risk. But 8 per -- 8 percent was
17 the line that I -- I used to even take a look at it
18 and say, Do I need to do something here.

19 Q. Okay. And then in what -- in what
20 conditions would need to exist for you to take some
21 action based on that 8 percent number?

22 A. If --

23 Q. Versus -- versus not taking action?

24 A. Well, it would have to be a scenario that
25 I felt that in -- again, in my judgment was likely

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1 enough, and it's to a large degree of a judgment
2 call. But I like to use probabilities and -- and
3 ranges of potential market movement to determine,
4 look, is this a -- you know, a -- is this a conflict
5 that we're going to get there? Is this a 1 in 10?
6 Is it a 1 in 100? You know, a 1-in-100 scenario,
7 likely throw it out. I would not even look at it.
8 1 in 10, I'd -- I'd take a closer look.

9 And, again, this is a -- this is a -- a --
10 this is a very judgmental thing. It's a -- it's a
11 model that -- and my judgment gets taken into
12 account in terms of what -- all these factors I keep
13 repeating, portfolio composition, market conditions.
14 And -- and some likelihood -- it's a risk-and-reward
15 balance, which is I think what, at least what I do,
16 as a portfolio manager.

17 Q. So were there times that OptionVue should
18 have lost more than 8 percent of portfolio value at
19 stress points, and you were considering and you did
20 not adjust the portfolio composition to eliminate
21 that -- that risk?

22 A. Yes. As I mentioned, every single day,
23 you can find a time and price combination that would
24 give you -- many time and price combinations that
25 will give you an 8 percent or greater loss. And so

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1 there were many times when I determined that that
2 was a highly, highly unlikely scenario. And at
3 least unlikely in terms of my judgment of risk and
4 reward and that I would elect to, either nothing
5 specific about that risk, or do nothing knowing that
6 over time the risk comes off, or, you know, that no
7 specific risk mitigation action was necessary in
8 that particular time frame or in that particular
9 scenario.

10 Q. Did OptionVue give you information about
11 how probable a particular scenario was?

12 A. Well, as I -- as I said, I took into
13 account current market volatility. So there are --
14 you can do some fairly easy statistics on, you know,
15 standard deviations of movement based on volatility
16 levels and standard deviations to give you
17 probabilities that's a, you know, status one-on-one
18 kind of textbook table you can find in a lot of
19 places. One -- one standard deviation carries a
20 certain probability that whatever you're measuring
21 will stay within a certain range. So that's the
22 kind of the thing I used, so it wasn't a pure, Hey,
23 how do I feel about this? There's certainly some
24 math involved as well. And I depended on that to --
25 to be a guide.

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1 Q. Well, walk me through the steps there that
2 you would -- you would undertake to determine
3 whether a particular scenario that involved a loss
4 in excess of 8 percent in portfolio value was likely
5 or unlikely.

6 A. Well, the first step was to -- you know,
7 you open up a -- you open up a chart saying, Is the
8 market then trending higher? Trending sideways?
9 Trending lower? And then you say, How -- what kind
10 of range of movement have we been experiencing?
11 That's where you can measure market volatility. So
12 I would -- OptionVue calculates this. It -- it
13 assembles a 20-day, 20-trading day lookback period,
14 which is fairly typical, in my experience. And
15 would compute a, you know, statistical distribution
16 on that. And -- and, like I said, then you use --
17 you've got a one sigma, two sigma, and you can --
18 you can kind of tell it will give you a probability.
19 And there's no certainties obviously, but it will
20 give you a mathematical guide that helps.

21 Q. Okay. Was there a particular probability
22 in OptionVue that -- that would, you know -- that
23 would prompt you, then, to take action?

24 A. Yeah. I mean, again, just a rule of thumb
25 that I liked to use was a one-sigma move or what --

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1 whatever time frame I was looking at for a couple of
2 reasons. My -- my experience with -- with actual
3 options behavior as opposed to simple models is that
4 upside movement tends to be bounded in -- in the
5 vast majority of cases by a one-sigma upside move.
6 Again, that's my experience and my judgment. But
7 that's -- that's what I use.

8 And downside, actually, two sigma or
9 sometimes greater, so a fat left tail. So -- so I
10 use those kind of guide. It helps. So whatever
11 time frame I was looking at, you know, what's a
12 one-sigma move. Now, even in a random scenario, a
13 one-sigma move to the upside is a 1-in-5 kind of
14 probability, maybe a 1-in-6, maybe a 1-in-7. I
15 can't remember the stats off the top of my head.

16 But in my experience, again, the -- that upside
17 boundary was a pretty good level to look at.

18 Q. When you say one-sigma move, does that --
19 does that equate to one standard deviation?

20 A. Yeah.

21 Q. And in determining or assessing the
22 8 percent, if there's an 8-percent decrease in
23 portfolio value, 8 percent of what number? Where
24 did you get the number every day to determine
25 whether that 8 percent threshold was exceeded or

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1 not?

2 A. Basically at 8 you'll have one of the Fund
3 or whatever account I'm trading.

4 Q. Okay. OptionVue showed that there was a
5 scenario that resulted in a decrease of an excess of
6 8 percent of portfolio value. That's something you
7 would have been aware of that that was -- that was
8 visually presented to you in OptionVue?

9 A. Yeah. Again, every day I could see
10 multiple examples of that scenario. I could adjust
11 the input settings and see more or less those
12 scenarios. I had to choose whether or not those
13 scenarios were likely enough to -- to take action.
14 That's really what the stress test was about.

15 Q. Okay. And when we're talking about the
16 standard deviation, the one -- one-sigma move or
17 two-sigma move, are you -- were you using OptionVue
18 to make that calculation, or were you calculating
19 that -- that standard deviation by some other
20 method?

21 A. Sometimes both. As I said, OptionVue
22 collects the data, as with any model. As I
23 mentioned before, you would have to take a look and
24 say, Does that seem right? And, again, in a -- in a
25 low volatility stagnant-type of condition, you know,

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1 you know kind of what to expect. And especially you
 2 don't -- if OptionVue, for example, changed their
 3 number dramatically from one day to the next, I
 4 would be suspicious and perhaps there was a little
 5 bit of a data hiccup or the calculation lookback
 6 period was incorrect. So as I also mentioned, go
 7 back and it was publicly traded or publicly
 8 published indexes of realized volatility trailing 20
 9 days, as I said, that's a standard period. And so
 10 that's a good sort of litmus test to make sure
 11 OptionVue is doing the number right.
 12 Q. All right. Can you take me through the
 13 specific steps, including the data that you used
 14 when calculating the standard deviation outside of
 15 OptionVue?
 16 A. Well, again, most of the time I would
 17 simply go to a published index. But it's
 18 essentially you assemble a -- you do it with Excel.
 19 I haven't done it in a while, but an analyst do it
 20 for me. It's just like in the world of calculators
 21 where you forget how to do math in your head. I
 22 don't know that -- that here today I can quote a
 23 calculation or an Excel formula, but it's a
 24 statistical distribution of closing prices on, in
 25 this case, the S&P. And oftentimes we use the cash,

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1 because the data's a little cleaner than a future's
 2 contract, and they're related. They're ultimately
 3 funded obviously. So you do -- you simply do a
 4 database of 20 observations, and you do a standard
 5 deviation calculation. And then once you -- once
 6 you understand the standard deviation, you have your
 7 sigma, and you do one sigma, two sigma, three sigma.
 8 And, you know, the standard probabilities,
 9 which, top of my head, a one sigma is a 66 or
 10 67 percent of the distribution, which, when you do
 11 it in one direction, it -- you essentially have a
 12 16-percent chance on the upside of receiving one
 13 standard deviation. And 16 percent on the downside.
 14 So you have these standard mathematically sound
 15 calculations that can be performed. That's related
 16 typically. As I said, that's -- that's with
 17 OptionVue would actually put a range at the bottom
 18 of the chart. And my job was just to -- just to
 19 make sure there didn't seem like there was something
 20 off with the OptionVue calculations, so I would
 21 periodically check outside sources.
 22 Q. How often would you do that? How often
 23 would you try to verify or audit the information in
 24 OptionVue with respect to the standard deviation?
 25 A. Whenever something didn't seem right to

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1 me.
 2 Q. And how often was that?
 3 A. I can't really put a -- can't really
 4 characterize it. I don't know. Again, I hope on
 5 OptionVue, if -- if a number had changed
 6 dramatically and I didn't see a reason for it to
 7 change or something just looked a little bit off to
 8 me, I would double check. And that's -- that's the
 9 same with any of the inputs to the models -- to the
 10 model.
 11 Q. But if something didn't seem off to you,
 12 you wouldn't -- you wouldn't undertake that
 13 exercise; is that right?
 14 A. Right.
 15 Q. When you mentioned -- in doing the
 16 calculation outside of OptionVue, you talk about,
 17 you know, 20 different data points. Does that mean
 18 the last 20 closing prices of the S&P, or what were
 19 you referring to?
 20 A. Yeah, less -- 20 closing prices of the S&P
 21 would be a typical -- as I said, a 20-day lookback,
 22 which is essentially a month. I think maybe some --
 23 to be more precise, the average month might be 21
 24 one day. So it's -- the idea is to have a month
 25 lookback to say, Here's -- here's our environment

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1 over the last month.
 2 Q. How did you typically stress the portfolio
 3 in a -- in a low volatility environment?
 4 A. Well, I -- I stress the portfolio pretty
 5 much using the same techniques I described,
 6 regardless of the environment. The environment was
 7 important. So if it was a high volatility
 8 environment, your standard deviation of price
 9 movement is -- is going to be much larger than a low
 10 volatility environment.
 11 In a high volatility environment, you can
 12 start to make some assumptions about changes in
 13 volatility. Low volatility environments tend to
 14 persist. High volatility environments tend to mean
 15 or hurt to lower volatility environments. That's my
 16 experience in terms of equity markets. I think
 17 there's some -- some kind of -- but it's my
 18 experience.
 19 So the environment is what it is. And I
 20 would stress it from a price standpoint accordingly.
 21 From a volatility standpoint, you know, high
 22 volatility environment tends to mean reverse. You
 23 want to stress or decline volatility. But high
 24 volatility environments, especially to the downside,
 25 can get even higher. You know, so it's like trying

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1 to bottom pick in an equity decline. You don't want
 2 to top pick a volatility.
 3 So if volatility's high, you're actually
 4 stressed to get even higher. If volatility is low,
 5 in my experience, you probably assume no change.
 6 And if volatility's high on the upside, you -- my
 7 technique was to stress a decline in volatility and
 8 see if that had an adverse effect.

9 Q. Okay. Then how would -- what would you
 10 consider defined to be a low volatility environment?

11 A. Oh, I would say -- I don't know if you
 12 want to use the stats. Annual -- annual volatility
 13 of 15 and less, maybe, is a low volatility
 14 environment. 15 and higher -- maybe 20 and higher
 15 is high. Normally it lands at 15 to 20. Those are
 16 good ballpark numbers, but...

17 Q. All right. Why don't we -- why don't we
 18 circle back for a moment to a little bit of the
 19 nitty-gritty of how OptionVue works. So I'm going
 20 to move into the marked -- you marked exhibit
 21 folder. Well, I guess you have -- you have the
 22 documents outside of Egnyte, so let's look at the
 23 next exhibit, Exhibit 2.

24 (Exhibit 2 was marked for identification.)

25 A. Right. Here's my first test.

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1 BY MR. FOSTER:

2 Q. All right. Bear with me for one moment as
 3 I am going to move it into Egnyte as well. So we're
 4 not so -- do you have Exhibit 2 in front of you,
 5 sir?

6 A. I do.

7 Q. Okay. And this is an e-mail from -- the
 8 first e-mail at the top of the document of the
 9 exhibit is from you to Mr. Schoonover and others,
 10 dated March 5th, 2017. Do you see that?

11 A. Yes.

12 Q. Okay. And just for the record, Exhibit 2
 13 has a -- first page Bates stamped SEC_01_0000524.

14 Do you recognize this document?

15 A. I can't say I recognize it. I have no
 16 reason to believe this is not an e-mail from me, but
 17 I don't remember it.

18 Q. Okay. Well, take a moment to look at it.
 19 And this is -- this e-mail includes several
 20 attachments, correct?

21 A. Several attachments to the documents I'm
 22 looking at, yes.

23 Q. Okay. And are -- are two of those
 24 attachments examples of the graph in OptionVue?

25 A. Let's see. It's flown all the way down.

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1 I see the side points -- I still recognize them to
 2 be -- at least four of them to be it looks like
 3 OptionVue.

4 Q. Okay. And I don't want -- I'm not
 5 focusing on -- this is on the -- on the particular
 6 date in which these were sent or the information on
 7 these particular OptionVue graphs. But, you know,
 8 if I'm understanding the e-mail, this OptionVue
 9 graph reflects -- there's two different graphs. And
 10 in the attachment line, one's -- one's labeled,
 11 Existing Mar 3rd close, and the other -- the other
 12 is, Graph Proposed Mar 3 close.

13 Do you see that on the first page of the
 14 document?

15 A. Are you talking about in the e-mail?

16 Q. In the e-mail, yeah. If you have the
 17 header information, there's descriptors for the
 18 attachments.

19 A. Okay. Yeah, I see the descriptors. I'm
 20 not good at figuring out pings and images, so I'm
 21 not sure what it refers to, but there's some
 22 attachments there.

23 Q. Okay. Well, take -- read your e-mail and
 24 see if you can tell me what you were writing to
 25 Mr. Schoonover, what you understand this e-mail to

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1 be sent.

2 A. I think -- let's see, if this is in
 3 March -- you know, it's back in December when
 4 Catalyst became pretty active in, you know, managing
 5 the Fund. So we were doing a lot of collaborative
 6 stuff where I was asked to provide some scenarios
 7 back to the Catalyst risk team investment committee
 8 about -- you know, basically, share with them some
 9 what-if scenarios. So it looks like that's what I'm
 10 doing.

11 Q. Well, just to orient you the way we put
 12 this Exhibit 2, it's -- so the -- there is -- as you
 13 can see, there is -- in the header, there's two PDFs
 14 that -- that, you know, say risk graph. Or one that
 15 says, Risk Graph Existing Mar 3 close. The other
 16 one says, Graph Proposed Mar 3 close. If you scroll
 17 down to the bottom of the document, those two
 18 attachments are -- are sort of repeated, because
 19 the -- for ease of this discussion, we included the
 20 native color version. So with respect to -- if you
 21 go to Bates number SEC_01_0000528, the next page is
 22 in the exhibit. The same -- it's the same graph.
 23 It's just now in color.

24 A. Okay.

25 Q. Do you see that?

| | |
|---|--|
| <p style="text-align: right;">Page 97</p> <p>1 All right. So let's focus on -- let's 2 focus on that page of the exhibit for a moment. 3 A. They -- 4 Q. You can color -- 5 A. The color graph, is that what you mean? 6 Q. Yeah. Page 8. 7 A. Okay. Page 8, okay. 8 Q. Of the -- of the PDF, yes. 9 A. Yep. Got it. 10 Q. All right. And if you would -- you should 11 be able to rotate it clockwise, so you can -- 12 A. Okay. 13 Q. Okay. Does the information displayed 14 on -- on this page of the exhibit of 2, does this 15 look familiar to you? 16 A. Honestly, no. 17 Q. Well, not -- not the precise data. But 18 I'm talking about the OptionVue screen. 19 A. Sure. The screen is -- certainly looks 20 like an OptionVue screen. 21 Q. Okay. Is this the screen that you 22 would -- you would typically see in OptionVue when 23 you used OptionVue? 24 A. This is what our screen looks like, yes. 25 Q. Okay. And is this the -- is this the</p> | <p style="text-align: right;">Page 99</p> <p>1 to have four curves instead of five. Typically it 2 opened up to five, and I would decide if I needed 3 one, two, three, four, five, depending on what I was 4 looking at. This one, also, I noticed is using 5 profit and loss, which is not something I used, 6 because, as I said, I didn't keep up P&L in 7 OptionVue. I'd look at values. So I'm guessing 8 that, again, Catalyst had asked me to model some -- 9 some scenarios. And, I do recall, they -- like 10 profit loss statements and books, so apparently, 11 upon speculating, looking at some of the parameters 12 here that this is something they asked me to do. 13 And I did it and shot it back to them, because I -- 14 I don't think they used OptionVue. It looks like -- 15 I think they used the first. 16 But these settings are a little different 17 than what I would look at. Most predominantly the 18 profit and loss, because that's not -- not 19 without keeping the accounting, that's not actually 20 accurate. It's more a generic, you know, here's a 21 general direction of the Fund. 22 BY MR. FOSTER: 23 Q. Well, can you tell me what the vertical 24 green line represents on the graph? 25 A. Vertical green line is current market</p> |
| <p style="text-align: right;">Page 98</p> <p>1 screen that would -- would pop up when -- when you 2 first opened OptionVue in the morning, this 3 particular screen? 4 A. No. 5 Q. Okay. What screen would -- would open up 6 for you when you go on OptionVue? 7 A. The one -- the one whose name I think I'm 8 miscalling securities of -- securities and index 9 quotations is what pops up. 10 Q. But this is the screen that you would -- 11 you would access as well? 12 MR. KOPECKY: Are you looking at the 13 vertical -- the risk of vertical access profit loss? 14 And if I understood his testimony earlier, maybe I 15 didn't, so you can ask him that, but, no. When you 16 show him something that quick and he doesn't have 17 time to review each of the different options 18 selected, I just -- I object to that. 19 So, Ed, take your time. Check all the 20 different ECXs you typically used, you talked about, 21 et cetera, et cetera. 22 A. Yeah. Sure. I mean, as I said, this 23 is -- this is the screen I look at every day. So 24 the format is exactly what I look at in terms of the 25 visual representation of curves. This one happens</p> | <p style="text-align: right;">Page 100</p> <p>1 price. And, again, depending on -- this thing looks 2 like -- oh, it's in -- well, it's in a back trader 3 mode. I can see that at the top. And that means 4 it's looking back in time at some point. So 5 whatever time it's looking at, the green vertical 6 line is today or current time. Or, I'm sorry, 7 current -- current price at whatever time you've set 8 the -- the model for. 9 Q. Okay. Is the model here set for 10 March 3rd, 2017? 11 A. By looking back per year, it's set for 12 11:30 in the morning on -- on March 3rd. 13 Q. Okay. Describe -- can you tell me what 14 back trader is? What is that? 15 A. So OptionVue -- one of its features is it 16 collects -- let's see, today I think it does a 17 15-minute interval. Back at that time, maybe 18 30-minute intervals. It collects actual market 19 prices, bid offer prices on options, and stores them 20 so that if you want to go back and say, What would 21 have happened if I did X, Y, or Z six months ago, 22 knowing there was a big market crash or something 23 you want to test, you could go back and test that 24 and model it using actual market prices for whatever 25 you were testing.</p> |

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1 Q. Okay. So you --
 2 A. Still a model. But you were using actual
 3 options prices, for example, to enter a position at
 4 that moment in time.
 5 Q. So using the back trader function, you
 6 could go back to a past date and time and analyze
 7 the position or portfolio using the market data as
 8 of that date?
 9 A. Yes.
 10 Q. And OptionVue includes historical market
 11 price data, then, I assume?
 12 A. Well, if you buy it, which I did, yes, it
 13 does.
 14 Q. And how far back does OptionVue's
 15 historical market price data extend?
 16 A. You know, I don't recall. They change
 17 data sources over time, just did a change recently.
 18 So that changes, you know. I want to say they go
 19 back at least ten years, but I'm not certain.
 20 Q. And here the -- the back trader date of
 21 March 3rd is the same date as the e-mail, right?
 22 The e-mail is actually March 5th, right? So this
 23 was -- and the e-mail is as of -- is Sunday, so this
 24 is the prior Friday. Does that seem right to you?
 25 A. Yeah, it's -- it's hard to tell from

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1 looking at this estimate.
 2 Q. Okay. And the vertical green line, that's
 3 something you would see when you opened OptionVue
 4 and looked at this -- this type of graph. That's
 5 something that's always there?
 6 A. Yeah. I think there's -- again, as much
 7 as I use this, sometimes I forget what settings are
 8 there and what settings aren't. I think you can
 9 remove it. But in a typical I would use it, you
 10 would open it up and get a vertical green line. You
 11 have to be a little bit careful if you're opening up
 12 a futures contract, because a futures contract --
 13 each contract month is separated by as much as 10
 14 bucks, so sometimes OptionVue will prematurely grab
 15 the next contract. So you have to watch out, as I
 16 mentioned. There's a number of things that you have
 17 to watch out for with any model to make sure it's
 18 giving you what you think it's giving you.
 19 But short answer is yes. That's a --
 20 that's a typical way to designate where, I would
 21 say, market price. And today being whatever time
 22 you set it for if you're going historical.
 23 Q. Okay. And does -- does the box that -- on
 24 the -- towards the bottom left of the screen that
 25 says, WAND, does that correspond to the green

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1 vertical line? Does that represent the same
 2 information?
 3 A. I guess it does. That will tell you
 4 precisely. Rather than squinting at the graph, it
 5 would tell you precisely where you have the green
 6 box located, because you can remove that green box.
 7 Q. Okay. And there's -- there's a large
 8 black dot that sits on the point where the green
 9 vertical line meets one of the dotted lines.
 10 Do you see that?
 11 A. Yes.
 12 Q. And what -- can you tell me what that --
 13 the black dot represents?
 14 A. That's typically the market price of
 15 whatever set of positions you have loaded in there.
 16 And that's an important number, because that's the
 17 actual -- if you're using real data in OptionVue,
 18 that is the actual market price. And sometime --
 19 and the curves are the model's estimate of what's
 20 going on. So sometimes there's a -- and it's one of
 21 the -- one of the ways I would use to -- to check
 22 the model. If that black dot is not sitting on the
 23 curve, that would suggest that the model is
 24 predicting something right now, right here, that's
 25 different than what prices people are agreeing to on

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1 the exchange. And so that suggests maybe you've got
 2 bad inputs to the model, or the real people trading
 3 are -- are -- their behavior is different than what
 4 Black-Scholes thinks it should be. That kind of
 5 thing. So the black dot is -- is actual prices.
 6 The curves are what the model thinks they should be.
 7 Q. Okay. So here in this exhibit, it would
 8 be the current value of the portfolio, the -- this
 9 March 3rd, 2017, date where it meets the T+0 dotted
 10 line?
 11 A. Well, I -- my portfolio, I don't know
 12 what's -- what's in here. I'm guessing it's some --
 13 Q. The -- yeah. So -- so let me back up
 14 there, then. What's the -- the information in
 15 the -- the box immediately above the -- the graph?
 16 A. It's not all displayed, because there's
 17 too much of it, but that tells you exactly what
 18 positions are -- are being modeled.
 19 Q. Okay.
 20 A. So that might be an old portfolio. It
 21 might be a single expiration period, for example.
 22 But whatever you've selected to model will appear --
 23 the positions will appear up in that box.
 24 Q. When you view this graph, were you -- were
 25 you -- was it your practice to view it for the whole

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1 portfolio?

2 A. Sometimes the whole portfolio. Sometimes
3 an individual position. Sometimes a position that I
4 was contemplating putting on. Sometimes a portfolio
5 plus that position. Some -- you know, any scenario
6 that I wanted to model, that's what I would look at
7 and I would select that with the -- the parameters I
8 was able to select in all.

9 Q. Okay. Understood. But would you -- would
10 you look at this graph for the -- the -- for all the
11 positions you had on in the ordinary course every
12 day?

13 A. Yeah. That would be what I would
14 typically open up to. And then just I sort of
15 drilled down what I needed to do or what else I
16 needed to model. So that -- that's typically what I
17 would open up to, to look at.

18 Q. Okay. And then -- so there -- as you
19 noted, there are four different lines here. And do
20 those lines correspond with the -- the legend or the
21 box that's overlaid the graph; is that right?

22 A. Oh, yeah, you mean the -- the two dotted
23 lines, the dashed line and the solid line?

24 Q. Yeah.

25 A. Okay. They correspond to different time

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1 frames, yeah. And the legend is there in the lower
2 left.

3 Q. Okay. And what -- and what -- the time
4 frames are -- can you explain what they are in this
5 example?

6 A. This example, it says T+0, which means
7 right now. T+5 is 5 days from now. And that's by
8 the way of calendar day. Option's models are built
9 on calendar days, oddly enough. T+9 is 9 days from
10 now. And T+14 is 14 days.

11 Q. Okay. The -- the T+0 line that -- the
12 dotted line that goes through the black dot shows --
13 does that show OptionVue's estimate, the March 3rd
14 value for these positions over a range of futures
15 prices?

16 A. Well, this case, it's showing a P&L,
17 because, as I said, Catalyst liked the P&L view.
18 But I didn't keep an accurate P&L, so I wouldn't
19 assign any meaning. You know, this -- this says on
20 the right-hand side minus, you know, 55 or 60
21 percent. So the Fund never had a loss that big, so
22 I can't really interpret exactly what it's looking
23 at. But I do know this thing's set on P&L. So I
24 can't tell you exactly what it's looking at. This
25 is simply Catalyst's files, so...

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1 Q. Okay. Do the numbers below at the bottom
2 of the graph -- well, what -- tell me what are the
3 numbers at -- at the bottom of the graph on the
4 bottom horizontal access.

5 What do they -- what do they reflect?

6 A. Well, they were talking about the Greeks.
7 And I -- in my use of OptionVue was to use the value
8 setting, to use the dollar value. So in -- in these
9 terms, I don't know the unit of measure. So it's
10 giving -- if, for example, 1.215 million delta, I
11 don't want to guess what that means, but it's a
12 delta measure.

13 Similarly, gamma, similarly theta, and
14 similarly Vega. So their -- their option's Greek,
15 but I'm not certain of the unit of measure settings
16 on this particular graph.

17 Q. Could you control the range of future
18 prices for its OptionVue display, the projected
19 values or P&L in this example?

20 A. Yes, you can -- in other words, the X axis
21 in this case plus or minus, it looks like roughly 5,
22 5-and-a-half percent. You can make that pretty much
23 as big or small as you want.

24 Q. Okay. Then the other three lines, they
25 display projections of P&L over -- over the other

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1 time periods specified, the 5, 9, and 14 days right
2 after March 3rd?

3 A. Yeah. Again, with the caveat that I had
4 no idea of what the P&L calculation is based on. I
5 can tell that the right-hand side percentage numbers
6 suggests that it's not meaningful in terms of actual
7 P&L, but they're designed to display something at
8 those different time frames.

9 Q. Okay. And what is the star -- what is the
10 star next to the T+9 line in the -- in the box
11 indicate -- or asterisk?

12 A. Well, my -- my guess is, because I've not
13 paid attention to that, that's the -- that's the
14 line that's highlighted, which I could tell from the
15 colors, so it -- honestly, I've not known this.
16 Perhaps OptionVue highlights with an asterisk. But
17 it's highlighted is what I pay attention to, so I
18 know what time frame I'm looking at. And whatever
19 these numbers below -- whatever any of the numbers
20 on the page refer to, refers to whatever -- you can
21 click on a time frame you want to specifically look
22 at.

23 And, like I said, you can tell it's
24 highlighted. That's what I use. I don't recall
25 what the asterisk may mean. This is a -- in this

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1 version of OptionVue, this is four years old, so I
2 don't remember what the asterisk means. I just know
3 the highlighted is what I use.

4 Q. Okay. So when you used OptionVue in the
5 time period we're talking about, again, September or
6 August 2013 through February 2017, you had a graph
7 with four or five lines in front of you like this,
8 you would do -- if you clicked on a particular line
9 or curve, that would -- that would change which
10 information is displayed at the bottom of the
11 screen?

12 A. Yes.

13 Q. Okay. So if you are looking at, you know,
14 this example, again, you described that it's
15 displaying P&L information or the active or chosen
16 line, which is the T+9. But in your use of Option,
17 that would -- that would be value numbers, correct?

18 A. Yes.

19 Q. Okay. Then what -- so, again, in this
20 example, immediately at the bottom of the graph, the
21 axis, which you see there, there's a range of
22 prices. Then underneath those, there's -- there's
23 percentage points, correct?

24 A. Yes.

25 Q. Okay. As you go along out on -- that

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1 axis, it's just describing, you know -- it
2 quantifies, you know, what the price is if you go
3 up, you know, .7 percent, 1.3 percent. It's giving
4 you a percentage from the current price, both --
5 both numerically and in a percentage, correct?

6 A. Correct.

7 Q. So then immediately below that, there's --
8 there's a purple line, colored line, which is one of
9 the reasons, you know, we had this printed in color.
10 And below that, there's a -- there's another colored
11 line underneath it. What is the -- what does the
12 purple line indicate?

13 A. So the magenta -- I'm a color purist.
14 Magenta, I'm sorry, is -- is the plus or minus one
15 standard deviation line that I talked about before.
16 And the teal below that is plus or minus two
17 standard deviations. And, again, this is one of
18 those parameters where I would have to do in my
19 colloquial, calling it a sniff test, to see whether
20 that -- whether that made sense.

21 And there's a field without -- if you
22 click on this line, there's a field where you can go
23 in and double check what data OptionVue has
24 collected to display those lines. And, again, I
25 would look at it. And typically if it changed or --

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1 or if there was some reason, in my understanding, of
2 market conditions that made it seem unlikely that
3 those lines were correct, I would go in and check
4 what's -- what's the data that OptionVue's collect.
5 But the -- the short answer is those are the lines
6 that tell you a plus -- plus or minus one standard
7 deviation, plus or minus two standard deviation move
8 over the time frame select.

9 Q. Okay. Going back to the next projected
10 date for a moment. That -- that controls the
11 projection horizon that's displayed, correct?

12 A. I'm sorry. Which --

13 Q. The box, the mass -- mass projected date
14 in -- it looks like it's --

15 A. Yeah. Okay. I see it. Sure.

16 Absolutely. And there's a -- there's a drop-down.
17 You can also manually enter a date. And that's
18 typically the -- it will typically default to --
19 actually, the -- the nearby options expiration. And
20 it will have drop-downs for every options ex --
21 expiration that are -- that contain positions.

22 Q. Okay. So based on the position -- the
23 positions entered in OptionVue, the box where you
24 select one of the different expirations --

25 A. Yes.

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1 Q. -- that apply in the positions or -- or
2 you can manually enter a different date?

3 A. Yes.

4 Q. And then I take it the number of lines
5 displayed is controlled by entering a value in the
6 box labeled number line?

7 Do you see that --

8 A. Yeah. That one is -- is a simple
9 drop-down of 1 through 5. I don't think -- yeah,
10 it's 1 through 5. So there's not -- you can't put
11 in each. So 1 through 5, you can select.

12 Q. Was there -- I'm sorry. I think you may
13 have told me there was a default number of lines in
14 OptionVue that would be populated?

15 A. It typically defaults to five, unless
16 there's less than five days to expiration, in which
17 case you can only have the number of days to
18 expiration, so...

19 Q. Was it your practice to use the default
20 number of lines?

21 A. Again, in -- in all the ways I used the
22 tool, I selected based on what it was I was trying
23 to use the tool for. So if I was looking at options
24 with 90 days' expiration, it's likely I would use
25 all five, because that's a long time frame. And a

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1 shorter time frame, I might use three lines. If I'm
2 comparing two positions on the before and after on
3 the portfolio, which can be done, sometimes that
4 gets messy, because now you got five lines where you
5 can compare two or three positions. It gets very
6 messy. You might reduce the number of lines. So
7 once again, I didn't have -- I had -- my practice
8 was specific to what I was trying to use the tool
9 for.

10 Q. Okay. Well, quickly going through -- I
11 think I'm following you. Quickly going through some
12 of the other information in here, there's -- under
13 the number of lines on the left-hand side of the
14 screen, there's a box for -- it's called -- it's
15 checked, called, Step through date. And then
16 there's an unchecked box, that's, Step through
17 volatilities?

18 A. Yes.

19 Q. Can you tell -- can you tell me what
20 those -- what information's indicated there?

21 A. So step through dates is what we've been
22 talking about, simply means that if you choose four
23 lines or five lines or three lines, it will step
24 through date intervals from today or the current
25 time is to equal zero. In equal increments or at

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1 least as equal as we can make it, as you can see,
2 14 day -- it goes 5, 9, 14, so it's roughly equal to
3 increments on four lines. But it's stepping through
4 time frames. If you switch the volatility, it will
5 simply display the -- the static curve, and it will
6 step through volatility increments, plus 1, plus 2,
7 plus 3, or whatever increment.

8 And that's the next one, volatility
9 changing points, which is a misnomer, but it's --
10 it's labeled points.

11 So if you set the volatility change to two
12 points and you say step through volatilities and you
13 choose four lines, it will say volatility plus 2,
14 plus 4, plus 6, plus 8. And it will show you what
15 that does to the model values for -- for a single
16 time frame. So it would say T=0, but volatility
17 plus 2 at four lines. In this case, volatility plus
18 2, plus 4, plus 6, plus 8. And you can do minus --

19 Q. And -- okay. Thank you.

20 You said that the points for volatility
21 change was a misnomer. What did you mean?

22 A. Well, volatility is typically expressed in
23 percentages. So, I mean, you can call it percentage
24 points. It's not -- so volatility goes from 10 to
25 11. Some people might say that's a 10-percent

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1 increase. The reality is, in this case, it's a one
2 volatility point increase, even though the measure
3 is percentage.

4 Q. Okay. And for the -- going next to step
5 through dates, so there's -- I thought it would be
6 five lines, as I understand it here. Four lines
7 have been selected. So then would OptionVue just
8 divide the time between the current date and the
9 mass projected date and sort of chop that up by
10 four?

11 A. That's correct. And, obviously, sometimes
12 it has to approximate. It's not equally divisible
13 by four, but that's the concept, yes.

14 Q. Okay. In your -- your daily use of
15 OptionVue, would you adjust those -- those sort of
16 default step through dates, or would you use the --
17 the way that OptionVue sort of divided them up
18 across the five or four lines, or whatever lines you
19 were looking at?

20 A. Yes. So, again, it all depended on what I
21 was trying to look at. By looking at the entire
22 portfolio, and does the portfolio contain positions
23 out of a long enough time frame? Is it short dated?
24 Because it -- again, if you're looking at a one-week
25 period with five lines, it can get messy. Those

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1 lines don't move much. So you say, Let's go down to
2 three lines. It's a clearer picture of what you're
3 trying to model. If you're looking at a particular
4 position, when's the expiration?

5 So, again, I'm sorry to be as repetitive
6 as this, but what -- whatever I want to use the tool
7 for would determine how I would set some of those
8 parameters.

9 Q. Okay. And so if you're going to switch to
10 the step through volatility function. So if the --
11 if the highlighted line was, you know, T+9 and you
12 click on the step through wall, it would -- it would
13 give you those different -- it would give you
14 volatility for that particular date?

15 A. Well, it would fix that date in terms of
16 time. It wouldn't give you other time frame. So it
17 fixed that date in time and assumed that that time
18 didn't move. And then it would say -- it would give
19 you step throughs on movement in volatility.

20 Q. Okay. Under the Volatility Change section
21 where there's a drop-down menu for that, there's
22 another box that says, Amount Provided. And then in
23 that drop down box, it says equal, Orig. It seems
24 to say original requirement. Do you know what
25 inform -- what that means?

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1 A. I -- I don't use that. Again, one of --
 2 OptionVue has some -- some pretty decent accounting
 3 features and reporting features that I generally
 4 don't use. And so this -- you can go in and say,
 5 Hey, I'm opening an account, and I'm going to
 6 deposit \$100,000. And it will then compute, you
 7 know, your P&L based on that as long as you do the
 8 accounting, which I -- that's just not what I use
 9 the tool for. So that's not a feature of OptionVue
 10 I use the amount provided, required, et cetera.
 11 Q. Okay. And you testified that you use
 12 OptionVue during -- in a particular time period
 13 we're talking about to this point, 2013
 14 through 2017.
 15 But I think I hear you to say that you
 16 still use OptionVue --
 17 A. I do.
 18 Q. -- is that correct?
 19 A. Yes.
 20 Q. Okay. You use that in connection with
 21 the -- the accounts that you manage currently?
 22 A. Yes.
 23 Q. Do you know what version of OptionVue that
 24 is?
 25 A. I don't.

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1 Q. The -- okay. So then there's a box
 2 under -- directly under that one, Vertical Axis,
 3 with -- you know, the profit and loss. But I take
 4 it that's where you could -- you could change the
 5 settings to value, and that would change the
 6 vertical axis?
 7 A. Correct.
 8 Q. And then underneath that, there's a
 9 horizontal access with a sort of button LR, and
 10 under that, another button plus, minus.
 11 Do you know what those do?
 12 A. Those allow you to -- to move where the
 13 center of the graph is back and forth, and plus or
 14 minus makes it bigger or smaller. It actually has a
 15 feature you can right click and do it a lot simpler
 16 with a mouse. So I can use those as well. But
 17 that's what they do. They -- they adjust the
 18 scaling on the graph.
 19 Q. Okay. And what about under, Results?
 20 There's information -- or there's the words, Target,
 21 in one little box, and then, Curr Bell, in another
 22 box. Do you know what those represent?
 23 A. I don't -- I don't use that, so -- and I
 24 can't speculate that.
 25 Q. And what about the two boxes that are --

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1 that are checked below that, Show BEs, and,
 2 Show Obj.Stp?
 3 A. Yeah, again, I don't -- I don't use those.
 4 Q. Okay. So you don't -- you don't use them.
 5 Do you know what they -- they mean?
 6 A. No. Again, I don't -- I don't use them.
 7 I don't want to guess.
 8 Q. Okay. We're almost done with this
 9 exhibit. If you go to the top, back up to the top
 10 of the -- the screen, if you will, you know,
 11 there's -- there's several tabs: File, Home, Tools,
 12 Data, Settings, Help.
 13 Do you see that?
 14 A. Are we on the same screen? I'm sorry, I
 15 started to scroll up and down.
 16 Q. Yeah.
 17 A. Okay. All right.
 18 Q. No, I'm sorry. Same screen.
 19 A. Okay. Which tabs?
 20 Q. So there's -- you see where it says File
 21 and then Home, then Tools, Data, Settings, Help?
 22 A. Yes.
 23 Q. All right. So the home tab is currently
 24 selected. And then underneath that, there's --
 25 there's, you know, Option. There -- there's Matrix,

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1 Price, Volatility. What -- what are -- what are
 2 those in that box that says, Asset Specific?
 3 A. Well, if I had my software open, I could
 4 tell you with a lot more certainty. But typically
 5 the matrix, I believe, will open into the actual
 6 display of options to strike prices and quotes. The
 7 price will give you a price grab from the underline.
 8 OptionVue does have some -- you know, it's
 9 got -- it's got graphing capability. I want to say
 10 they've got some, but not a full fledged charting
 11 suite, if you're a technical chartist. The
 12 volatility will display a graph of the underlining
 13 volatility. So the matrix will give you pricing.
 14 The pricing will give you price of the underline
 15 graph of the tools.
 16 The volatility will give you a graph of
 17 how volatility is behaved all the time. Information
 18 will give you -- info gives you set -- a bunch of
 19 settings about how you want your account to behave.
 20 And, again, I don't use those. Those are
 21 P&L reporting-type stuff. And I just use this for
 22 modeling, not reporting. The trade log will have a
 23 record of more -- as I suggest, trades.
 24 So when you enter a trade, it will record
 25 it in a log form. And, once again, in managing the

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1 Fund, this was a good tool to ensure that we had the
2 right positions in. But it wasn't -- we actually
3 just double-checked with the official accounting
4 record when we periodically checked. We, meaning
5 myself, Catalyst, and my analyst, basically. I
6 don't recall what status means. I don't use that.

7 Instead, I'll use the reporting. I don't
8 use trade finder or survey. Some of those
9 features -- the OptionVue is built for individual
10 equity options trades. And so there's a lot of
11 features that help -- to my understanding is to help
12 people that trade options that an individual
13 equities -- to scan the universe of option and
14 stocks and look for earnings and look for lots of
15 different things. So some of these have those
16 features, which I don't use.

17 Q. With respect to trade law when you -- when
18 you mentioned that -- that you were an analyst,
19 someone would -- would check the information against
20 the official accounting record. What are you
21 referring to?

22 A. So we -- we periodically -- essentially I
23 would ask my analyst, because I would enter the
24 trades personally as I made them. And then I'd ask
25 my analyst a couple of times a week usually to --

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1 basically, I would go get a sandwich and tell him to
2 take over my screen and compare the positions in
3 OptionVue to what the -- the official portfolio
4 record from an accounting showed just to make sure
5 that we weren't missing a position. I mean,
6 normally I could tell by looking at, again, kind of
7 a split test in the graph. But we did go through
8 that line. We wanted to have a second set of eyes
9 instead of me staring at it. I stared at it enough
10 as well to make sure thing's correct. But I would
11 let my analyst just take over and spend an hour
12 doing a comparison just to make sure we had good
13 apps.

14 And the trade log was helpful, because if
15 there was a discrepancy, we could see was that a
16 double entry in the OptionVue? Was it a -- you
17 know, it was rare. Every once in a while it might
18 have been a mistake in how it was picked up by the
19 accounting -- fund accounting.

20 So -- so we checked all those things in
21 the trade. The trade launch showed us what was
22 going on in -- in OptionVue. Not -- not the
23 official record, because sometimes if we did find an
24 error, we'd enter a correcting transaction. So you
25 would see something in OptionVue that wasn't an

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1 actual trade, but rather an adjustment entry to
2 bring OptionVue back in line officially. We
3 submitted each day the official trade record, trade
4 log, which was kept. And we submitted that to -- to
5 Catalyst and to fund accounting. So this is just a
6 log of what got entered into OptionVue.

7 Q. Would OptionVue allow you to -- so using
8 this -- this screen in Exhibit 2 as an example,
9 the -- the four lines displayed the graph and the
10 data corresponding to the active line, would -- did
11 OptionVue allow you to output this information,
12 these values and save them in a computer file?

13 A. I don't know. I've not done it. I didn't
14 have a -- I didn't ever find a value in doing that,
15 so I'm not certain.

16 Q. Okay.

17 A. I mean, as you can see, you can print a
18 screenshot. That's typically -- that's -- that's
19 most of the outputting we did. If we wanted to
20 share a view like this, we do a screen print. But I
21 didn't use it to output any data.

22 Q. Okay. You never practiced -- have some
23 form of practice of saving or recording the analyses
24 that were from day to day reflected in OptionVue?

25 A. No. Not -- not the modeling. I mean, we

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1 certainly did studies in which we used OptionVue to,
2 you know, walk through a trading test, and then we
3 recorded results from OptionVue. But we did that,
4 you know, basically manually using OptionVue as the
5 tool. But there wasn't a good way to -- to -- in
6 other words, it's not really a strategy testing tool
7 that you can test a strategy and have OptionVue
8 output tabular results. That was a manual process.
9 We did that, you know, from time to time over
10 certain periods, if we wanted to test the
11 performance of a particular methodology.

12 Q. Okay. So absent a printout of a screen
13 or -- or some other output of the OptionVue graph or
14 analysis, could -- could you use OptionVue's back
15 trader functionality to -- to go back and determine
16 what -- essentially replicate what -- what an
17 OptionVue analysis would have looked like on a
18 particular day?

19 A. Yes. That's how we use back trader. You
20 can back to any point in time that they have data
21 for, and there's holes in data. But, you know,
22 ideally you go back to a point in time where data
23 was available. If you want to test a particular
24 position, how it would move through time, or a
25 collection of positions through a particular market

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1 environment and say how would it behave, then, yeah,
2 that's -- that's essentially what back trader's used
3 for.

4 Q. Okay. And that would be based on the
5 portfolio composition during that prior time period,
6 correct?

7 A. Well, again, it didn't save prior
8 portfolios. You would have to go back and say,
9 Here's a collection of positions I'd like to test.

10 And so typically, you know, it was -- it was
11 burdensome to go back. So if you wanted to test
12 something, we generally test a generic strategy as
13 opposed to trying to reconstruct pretty complex
14 portfolio from some recent history. It was more
15 around a particular type of position or collection
16 of positions where we entered a simplified version
17 and use that to kind of see how it behaved.

18 Q. Okay. You could reconstruct the portfolio
19 for a prior time period, but -- correct?

20 A. You could if you wanted to, you could put
21 anything you want.

22 Q. Okay. In the box -- for this exhibit,
23 again, the screen we're looking at, the volatility
24 change, you know, it's set to 0.0 percent.

25 What does that -- what does that mean?

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1 A. That means we're assuming that whatever
2 the current volatility level is doesn't change. And
3 we're just -- we're looking at how essentially price
4 as the only input to changes in the value of the
5 portfolio.

6 Q. And if this -- if this box contained a
7 nonzero value, then what would OptionVue do?

8 A. So, for example, if you put a 1 in there,
9 it would adjust all the curves to assume that the
10 implied volatility of the options had increased by
11 one point.

12 Q. And then OptionVue would compute the
13 option prices using that adjusted volatility
14 estimate?

15 A. Yes. You'd see each of these curves
16 change position and possibly, likely, in fact, the
17 shape.

18 Q. Okay. Were there volatility scenarios
19 that you typically considered?

20 A. Again, in the low volatility environment,
21 typically I would leave that alone. In a high
22 volatility environment, I would stress the downside
23 by increasing even further. And then also look at
24 scenarios in which volatility declined back to more
25 of a norm.

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1 Q. Okay. Did you -- did you stress vol
2 points -- volume points or volume percentage?

3 A. Well, I -- I used what OptionVue gives me.
4 I -- I know that what OptionVue does is, as I said,
5 if -- if volatility is 10 and I want to stress to
6 11, I'm putting a 1 in there. So that's a
7 10-percent increase in volatility, which is a decent
8 size increase. But the way OptionVue models it,
9 it's a lot.

10 Q. Is there a way to enter the AUM of the
11 Fund in OptionVue?

12 A. There -- as I said, I know that there's a
13 way to enter account values, but that's not how I
14 use -- use the tool.

15 Q. In the way that you use OptionVue, would
16 you determine -- even though you had -- as I
17 understand it, the vertical axis set to value, would
18 you determine, on a percentage basis, you know, the
19 impact to that portfolio, given price and volatility
20 assumptions?

21 A. I'm sorry. I don't think I understand.

22 Q. Well, would you -- would you determine --
23 so if you were to set the value and you see that a
24 particular, you know, increase -- you know, for one
25 of the -- the graphs had a particular price, you

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1 know, increase in the S&P 500, for example, by
2 5 percent, would that have -- you know, result in a
3 particular dollar value impact on the portfolio,
4 would you calculate a percentage by the AUM to
5 determine that on a percentage basis?

6 A. Yeah. I mean, as I mentioned, about our
7 suite of risk metrics, we had a report that came out
8 every day that -- that measured both on the call
9 side independently, the level of open option. So I
10 had a pretty good -- I had an exact calculation to
11 look at beginning the day. So I knew within the
12 level of precision, I needed to graph where that
13 8 percent level was in terms of dollars, what dollar
14 level to look at option.

15 Q. Would you personally -- did you undertake
16 any steps to determine the percentage impact on the
17 portfolio from a projected loss in option --
18 OptionVue, for example, a hundred million?

19 A. I don't understand that -- what you're
20 asking.

21 Q. Well, if you have a value OptionVue's not
22 telling you -- and I think in the way you use
23 OptionVue. OptionVue's not telling you in and of
24 itself that there's, for example, a different
25 scenario that the portfolio would -- would expect

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|---|--|
| <p style="text-align: right;">Page 129</p> <p>1 to, say, have an 8 percent, you know, drawdown in 2 NAV, how would you -- how would you calculate that 3 from the information in OptionVue? 4 A. Well, again, I'm trying to say it as 5 consistently as I can. We enter positions at even. 6 So the 8 percent of NAV number is significant, 7 because it's some indication, a pretty close 8 indication, in my experience, that you are 9 experiencing a drawdown in NAV and AUM. 10 Now, again, every day you have a report 11 showing where we stood against that drawdown number 12 anyway. That was, again, a number Catalyst wanted 13 to add to it. For me at the portfolio manager 14 level, I'm controlling to what I'm seeing in 15 OptionVue in terms of open option premium. And so 16 I'm controlling to that 8 percent line, which alerts 17 me to, all right, here's an 8 percent number. 18 Now, is that a scenario that is meaningful 19 in terms of the portfolio composition and market 20 environment from the NAV. So -- so, again, within 21 the tolerances of the -- you know, of the -- in 22 other words, for a million-dollar fund, if I'm 23 accurate to a million dollars or \$10 million, 24 that's -- that's good enough. That's better than 25 the accuracy of the model, probably significantly.</p> | <p style="text-align: right;">Page 131</p> <p>1 at 12:58 p.m. 2 (Recess taken.) 3 VIDEOGRAPHER: Okay. We're going back on 4 the record at 1:34 p.m. 5 BY MR. FOSTER: 6 Q. Okay, Mr. Walczak, circling back to a 7 topic we talked about earlier in the day, the -- the 8 periodic open house telephone conference calls. You 9 participated in such calls during the period from 10 January 2014 through February 2017; is that correct? 11 A. I -- I can't swear to the exact window 12 when it began, but certainly they were around for a 13 period of time. 14 Q. And that period of time spanned several 15 years, correct? 16 A. Again, I don't know if it was several 17 years, a year, year and a half. They went on for a 18 period of time. What endpoint do you want to use? 19 If you say until the time I left Catalyst, then, 20 yes, several years. If you want to say till 2017, 21 then I'm not sure how long prior. 22 Q. And during -- during those open house 23 calls, you provided updates -- updates and answered 24 questions from financial advisors, correct? 25 A. Correct.</p> |
| <p style="text-align: right;">Page 130</p> <p>1 So I know the number that I need to look at on this 2 chart. And then I evaluate whether that's a likely 3 enough scenario to take some action. 4 Q. On this chart where the volatility, is 5 that referring to the VIX or something else? 6 A. The -- this is referring -- this 7 volatility is the volatility in the options pricing 8 volatile options using to do its estimate of options 9 or values of different points. 10 Q. Okay. 11 A. Each option has its own volatility built 12 into it. 13 MR. FOSTER: Okay. I'm gonna move on from 14 this onto something else. 15 Do you want to take a quick lunch break? 16 THE WITNESS: Sure. 17 MR. FOSTER: Okay. 18 MR. KOPECKY: Yeah, up to you guys. So 19 it's 1:00. What do you want? Half hour? Say 1:30? 20 MR. FOSTER: Yes. 21 THE WITNESS: That's fine. 22 MR. KOPECKY: Okay. Great. Back here at 23 1:30. 24 MR. FOSTER: All right. Thanks. 25 VIDEOGRAPHER: We're going off the record</p> | <p style="text-align: right;">Page 132</p> <p>1 Q. Those calls were recorded; is that right? 2 A. Yeah. I found out after the fact that 3 they were. Yeah, they were recorded. 4 Q. You were unaware at the time that the 5 calls were being recorded? 6 A. I was unaware of the use of recordings, 7 but they announced at the beginning of the call -- 8 of each call that they would be recorded, but I 9 thought for internal records. It turned out for 10 different purposes, I later discovered. 11 Q. What -- for what purpose did you think 12 they were being recorded at the time? 13 A. I thought for simple recordkeeping for 14 some sort of compliance requirement. 15 Q. And for what purpose did you come to learn 16 later in time that they were being recorded? 17 A. Well, very much later in time, I learned 18 that they were being distributed as a marketing 19 tool. 20 Q. Okay. You were -- you were not aware of 21 the fact that -- what do you mean by -- I'm sorry. 22 Let me back up. 23 They were being used as a marketing tool 24 how? 25 A. Well, they were being distributed to</p> |

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1 audiences that have -- unknown to me, but they were
2 being distributed, I later discovered.

3 Q. You -- you weren't aware at the time that
4 if someone missed the call that there was a
5 recording available that someone could listen to
6 after the fact?

7 A. No. I was very surprised to understand
8 that -- that the calls were available after the fact
9 to others.

10 Q. Well, others, they were available after
11 the fact to financial advisors or interested
12 investors in the Fund, right?

13 A. Again, I have absolutely no idea who
14 Catalyst made those calls available to. My
15 understanding for the time I provided them was that
16 they were being recorded and just kept internally.
17 And I had a phone conversation that -- which I
18 learned otherwise.

19 Q. What -- based on -- what was the basis for
20 your understanding or belief that the calls were
21 being recorded merely for internal recordkeeping
22 purposes?

23 A. That's an assumption I made, because
24 no one told me otherwise.

25 Q. Did you ever ask anybody why they were

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1 being recorded?

2 A. No.

3 Q. And why did it surprise you to learn that
4 the recordings were made available after the fact to
5 financial advisors?

6 A. Because I never contemplated that
7 beforehand, so it came as a surprise.

8 Q. But you understand in real time the
9 information you were communicating was -- was
10 reaching financial advisors, correct?

11 A. Certainly. I was communicating to people
12 on the call, yes.

13 Q. What's your understanding of -- of how
14 people received invitations or gained access to --
15 to listen to those calls?

16 A. I have absolutely no idea.

17 Q. Did you ever ask anybody --

18 A. No.

19 Q. -- anything about that topic?

20 A. No.

21 Q. Are you familiar, generally, with the
22 nature and type of information you provided on the
23 open house call?

24 A. I'm not sure what you mean by nature and
25 type of information on open house calls. I mean, I

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1 was on them.

2 Q. Okay. What -- what -- what type of
3 information would you share about the Fund during a
4 typical open house call?

5 A. I would start with a very high level of
6 general overview of how the Fund's positioning -- or
7 positioned. In other words, you know, were we doing
8 cliffs (Phonetically) calls. You know, where did we
9 stand relative to potential, you know, changes in
10 the market, environment changes in volatility, just
11 a -- kind of a general overview of what our
12 strategy -- where our strategy had led us at that
13 point in time. And generally to questions, which I
14 think was the purpose of the call, was to just
15 describe a little bit more about, well, how do you
16 trade these types of calls. So that's the type of
17 information that's typically provided.

18 Q. During those open house calls from time to
19 time, would you describe how you used OptionVue to
20 assess and manage fund risk?

21 A. Yeah. There was -- there was a reasonably
22 minor part of the calls in the aggregate. There
23 were a lot of calls. So I didn't -- I certainly
24 didn't get a lot of questions, nothing like what we
25 talked about today, for example, about the detail of

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1 the option software. It was more about the
2 strategy.

3 Q. I'm not sure, then -- I'm not sure I
4 totally understand your answer. From time to time,
5 would you describe how you used a computer program
6 to assess and manage fund risk?

7 A. Yeah. My sense was that was a small part
8 of the conversations. That's my recollection.
9 But -- but certainly that came up.

10 Q. And even if you didn't mention OptionVue
11 by name, you described stress testing that you
12 conducted on the portfolios; is that fair?

13 A. Yeah. Again, when they asked which was a
14 minor part of the -- the information that I was
15 providing. When asked, I -- I responded to the
16 questions about stress testing.

17 Q. In responding to such questions, did you
18 describe how you used a software program to project
19 portfolio value over several time horizons for range
20 of assumptions about changes in the level of
21 S&P 500 Index future's prices and option volatility?

22 A. Yeah. I did -- I did offer a -- sort of a
23 generic explanation to give people a feel for the --
24 the way I used the tool, yes, that's correct.

25 Q. Did you ever, in sum or substance,

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1 represent that an option that was a computer program
2 results showed that one or more of those scenarios
3 involved a loss in excess -- excess of 8 percent of
4 the Fund's NAV that you would hedge the portfolio to
5 eliminate that possibility?

6 A. Yeah. I did talk about -- because that is
7 the -- the metric that I used. So -- so when asked,
8 again, I don't remember that it was more than a
9 handful of times over the years of doing the calls.
10 But when asked specifically about risk management,
11 I -- I think I very truthfully answered that when I
12 saw a scenario that, in my judgment, would lead to a
13 loss, I took steps to -- to mitigate that potential,
14 at least to the best of my judgment.

15 Q. Did you ever represent in sum or substance
16 that if OptionVue or a computer program, if you
17 didn't name OptionVue specifically -- let me start
18 over.

19 Did you ever represent in sum or substance
20 that if the option software you were utilizing
21 showed that one or more scenarios that you were
22 stressing involved a drawdown of more than 8 percent
23 that you would hedge the portfolio to eliminate the
24 possibility of that drawdown?

25 A. Again, it's -- I have to, again, provide

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1 the context. It's kind of rare, so it's difficult
2 for me to remember the specifics. But I do remember
3 having at least a handful of conversations about how
4 I managed risk and how I stressed the portfolio.
5 And, again, it's never -- again, context, never
6 intended to provide a detailed explanation of all
7 the actions I took managing the Fund, but I did talk
8 about being aware -- using an 8 percent number,
9 using a computer model, and mitigating risk when I
10 saw those scenarios appear that I felt were valid
11 ones in which to react to.

12 Q. Okay. And when you did that, you
13 understood it was important that whatever you said,
14 whether it was at a general or a detailed level that
15 the information you conveyed needed to be accurate,
16 you understood that, right?

17 A. I understood my audience, and I gave, I
18 think, a truthful account of how I managed the Fund.
19 But, once again, the important context is that these
20 were a group of sophisticated investors. They, in
21 my belief at least, you to -- and were advised
22 beginning of the calls not to take my remarks as a
23 comprehensive description of the risks of the
24 investment, not to take my remarks as a detailed
25 description of all the tools and all the actions I

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1 took to manage the funds.

2 So in that context, I absolutely -- I -- I
3 didn't say anything that I didn't believe not to be
4 accurate and truthful. But I do think the context
5 is important. That's why I've taken some time to
6 make sure it gets on the record.

7 Q. Okay. What I really want you to do, sir,
8 is to answer my questions and not put in the record
9 what you think is important. So I -- I got your
10 context. I understood what you're saying.

11 But I'm just asking when you spoke on
12 these calls, did you understand that it was
13 important that whatever you -- information you
14 conveyed needed to be truthful and accurate? You
15 understood that, right?

16 A. Mr. Foster, all my responses -- and,
17 again, I'm not trying to be difficult here by any
18 means. I simply want to make sure that I'm giving
19 you the whole truth. From my oath, the whole truth.
20 And I can't afford to give you yes-or-no questions
21 that, without context, could be misinterpreted.
22 This is a video deposition. It's going to be
23 replayed. And I must ensure that I'm giving you an
24 accurate contextual response, rather than a simple
25 yes or no. It might be misread -- misleading.

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1 Q. Mr. Walczak, can you answer my question
2 yes or no? Did you understand it was important to
3 be truthful and accurate when speaking on the open
4 house calls? Can you answer that yes or no?

5 A. Of course. Yes.

6 Q. Okay. Please do. And what's your answer?

7 A. I'm sorry. I meant that to be my answer.
8 Yes, it was important to be truthful and accurate,
9 yes.

10 Q. You understood at the time, right?

11 A. Yes.

12 Q. Now, there came a point when you told me
13 that you learned that the house calls were -- well,
14 you knew the house calls were recorded, and then
15 later in time you learned what use was being made of
16 those recordings.

17 Have you ever listened to any of the
18 recordings of the -- of the open house calls in
19 which you spoke?

20 A. I've had sound bytes played for me, but
21 outside of those sound bytes, I've not -- I've
22 definitely not listened to any of the calls in their
23 entirety.

24 Q. In what context did you have sound bytes
25 played for you?

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1 A. At depositions like this.
 2 Q. Outside of -- of a setting where you were
 3 providing sworn testimony, have you ever listened to
 4 any of the recordings of the open house calls?
 5 A. The sworn testimony, including my recent
 6 arbitration, the ones I recall very vividly. So if
 7 I heard recordings of others, the only other context
 8 I could think of would be my attorneys, my counsel
 9 playing them for me.
 10 Q. Okay. Well, did that occur? Did you
 11 listen to a recording that an attorney played for
 12 you?
 13 A. Again, I -- I don't recall that for sure.
 14 I recall that I heard sound bytes played for me,
 15 depositions and testimony, and, again, arbitration
 16 proceeding. And I -- I think my attorneys may have
 17 in -- in attorney-client discussions, played sound
 18 bytes for me. But in general, I haven't listened
 19 to -- I know I haven't listened to an entire -- any
 20 of the entire recordings.
 21 Q. Have you ever read a transcript that was
 22 prepared of any of the recordings of the open house
 23 calls?
 24 A. The same -- same response. I've read
 25 sound bytes which, again, drives my desire for

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1 context, because I recognize the sound bytes to be
 2 small clips from very, very large conversation,
 3 degrees of conversation and volumes of conversation.
 4 So the only transcripts I've seen are, once again,
 5 sound bytes.
 6 Q. Meaning, you've never sat down with a full
 7 transcript of a particular recording and read it
 8 from front to back?
 9 A. That's correct. I've not done that.
 10 Q. And you've been shown, I take it, in
 11 your -- in deposition or other testimony setting,
 12 you've been shown portions of a transcript. Is that
 13 what you mean when you refer to sound bytes?
 14 A. I -- I have been shown what I do recognize
 15 to be very, very, very small portions of individual
 16 calls. And in some of all the calls, I would go to
 17 put maybe 100 varies in front of the small.
 18 Q. Well, typically how long would these house
 19 calls last?
 20 A. Let's see. So most the house calls
 21 included myself and my colleague, Kimberly Rios who
 22 managed the Hedged Commodity Futures Fund, so I
 23 would typically provide a -- I don't know, maybe a
 24 10, 15-minute overview of the Fund. Sometimes she
 25 would then do an overview. And then we take

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1 questions. I think sometimes I might take questions
 2 before the overview. I don't recall.
 3 In total, depending on the level of
 4 interest, which varied, it could be anywhere between
 5 20 minutes and 45 minutes maybe, maybe some longer.
 6 But that's my best guess and recollection.
 7 Q. Sir, have you read the SEC's complaint in
 8 this case?
 9 A. I have not -- not recently, but I have.
 10 Q. And the complaint allegations include
 11 references to and quotations of certain portions of
 12 the open house calls, correct?
 13 A. I believe that's right, yes.
 14 Q. Okay. Have you at any point since the
 15 filing of the complaint in late January of 2020
 16 listened to those cited or quoted calls or read
 17 transcripts of the same?
 18 A. I don't remember that I matched up, as I
 19 said that certainly in that time, particularly with
 20 regard in my recent arbitration. And I don't recall
 21 specific other occasions, but certainly there have
 22 been occasions where I heard, again, the sound
 23 bytes, audio sound bytes. Again, I didn't make any
 24 effort to match them to the ones quoted in the
 25 complaint.

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1 Q. Well, the complaint -- the complaint
 2 alleges that you said certain things in the house
 3 calls. Did you ever go and check out a transcript
 4 or recording to see if what the SEC alleged was --
 5 was true? Did you ever do that?
 6 A. I didn't personally do that.
 7 Q. If someone did it for you, how would
 8 you -- how would you -- did someone do it for you,
 9 if you say you didn't do it personally?
 10 A. Again, I -- as I sit here today, I don't
 11 know that I ever asked my counsel, Hey, did you make
 12 sure that this was correct or not correct? It's
 13 just not come up.
 14 Q. So the recordings that -- of those open
 15 house calls, do you understand those have been
 16 provided to you in discovery in this case?
 17 A. I believe they probably have been.
 18 Q. Without listening to the house calls or
 19 reading transcripts of the same, are you able to
 20 admit or deny what you said during those house
 21 calls?
 22 A. I guess if -- I guess I'm relying on the
 23 fact that, you know, I don't see anything that
 24 sounds like something I didn't say. Like, Oh, my
 25 gosh, I don't remember ever saying that. So, again,

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| <p style="text-align: right;">Page 145</p> <p>1 in consultation with my attorneys, no one said to 2 me, Ed, did you really say this, or, We listened to 3 the calls and we didn't hear this. So I didn't 4 really see a reason to personally go listen to the 5 house calls. 6 Q. Well, just to be clear, sir, in these 7 questions and in any question that I may pose to 8 you, I don't want to know anything about what 9 conversations you -- you have or -- or, you know, 10 didn't have with your attorneys or what you may have 11 said to your attorneys or they may have said to you. 12 Just want to let you know that. So I'm just asking 13 really if you personally ever went back, listened to 14 the calls, or read the transcripts to see if what 15 the SEC was alleging about what you said matched 16 with what was in the recording or in the transcript. 17 Did you ever do that yourself? 18 MR. KOPECKY: Asked and answered three 19 times now. 20 Go ahead and answer it again. 21 A. No, I did not personally do that. 22 BY MR. FOSTER: 23 Q. Have you sought at any time to determine 24 what you said concerning an 8-percent drawdown limit 25 or threshold in connection with the</p> | <p style="text-align: right;">Page 147</p> <p>1 reporting service of a house call from 2 November 4th, 2014. And while you're getting that 3 in front of you, sir, I'm going to move it to the 4 marked exhibit folder in Egnyte. 5 All right. Do you have that exhibit in 6 front of you, Mr. Walczak? 7 A. I do. 8 (Exhibit 3 was marked for identification.) 9 BY MR. FOSTER: 10 Q. Could you turn to page 15 of the 11 transcript? 12 A. As numbered on the -- so not the PDF, 15 13 on the transcript. I've got it, I think. 14 Q. Yeah, that's correct. Each page of the 15 PDF essentially captures four pages of the 16 transcript. And those page numbers are in sort of 17 small right-hand numbers. 18 A. Okay. 19 Q. At the top. All right. So page -- 20 page 15, just to make sure we're on the same page, 21 is page 4 of the PDF. 22 A. Okay. 23 Q. Do you see that starting at around line 13 24 of page 15? 25 A. Yes.</p> |
| <p style="text-align: right;">Page 146</p> <p>1 Hedged Futures Fund on those house calls? 2 A. I'm sorry. I didn't understand the first 3 part of your question. 4 Did I -- could you ask it again? 5 Q. Sure. Given what you told me about -- 6 about the fact that you haven't gone back and 7 listened to the full call -- the full house calls or 8 read the full transcripts, is it fair to say you've 9 never gone back and looked to determine what you 10 said during the open house calls about an 8-percent 11 drawdown limit or threshold in connection with 12 managing the Hedged Futures Fund? 13 A. Again, I've been shown the transcripts 14 of -- of, you know, brief sentence fragments and 15 sound bytes recorded from those calls. The words 16 don't immediately concern me in terms of, Oh, my 17 gosh, I probably never said that. So from that 18 context, you know -- again, in conversations in 19 reading the complaint, in conversations with 20 counsel, I've -- I've seen what was said. 21 Q. Okay. Well, let's -- let's -- I promise 22 I'll show you more than sentence fragments. So 23 let's look at a transcript of one of the open house 24 calls. So if you turn to what's been premarked as 25 Exhibit 3, which is a transcript prepared by a court</p> | <p style="text-align: right;">Page 148</p> <p>1 Q. Okay. All right. You're responding to a 2 question, and you said, Sure. You said, I'll talk 3 about risk management. That's a few lines before. 4 But I want to specifically draw your attention to 5 the sentence that begins, I use risk management, on 6 line 13. 7 A. Yes. 8 Q. So particularly the sentence that -- that 9 is going on from there, it reads: I use risk 10 management to control losses to roughly 8 percent. 11 That's the number I use in stress testing. It's 12 larger than the largest drawdown the Fund has had in 13 the last seven years. And that's been a period of 14 time over which the risk management system I use now 15 has been placed. The largest drawdown is a little 16 over 7 percent. As I said, I control it to 8. 17 8 percent is not a hard number, simply because of 18 slippage and so forth in execution. But that's the 19 number I control to when I do stress the portfolio. 20 All right. So I want to pause there and 21 focus on the -- on that commentary for a moment. 22 When you said you control losses roughly 23 8 percent, does that mean 8 percent reduction in 24 NAV, or an 8-percent drawdown from high water mark, 25 or what do you mean when you said that you control</p> |

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| <p style="text-align: right;">Page 149</p> <p>1 losses to roughly 8 percent, or you manage -- use 2 risk managements to control losses to roughly 3 8 percent? 4 A. Well, again, my goal was -- and -- and I 5 talked about it earlier today in testimony, my goal 6 was controlling that open option value to 8 percent, 7 which for -- in my experience, translated to 8 controlling drop-downs to, as I said, somewhere 9 around 8 percent. Even though 8 percent is not a 10 hard number, there can be slippage and other factors 11 involved. But that was my intention. So that's -- 12 it's exactly what I told you earlier today. 13 Q. Okay. But we -- an 8-percent reduction in 14 NAV is not the same thing as an 8-percent drawdown 15 from a high water mark, right? 16 A. Say that again. 17 Q. What I'm trying to understand is the 18 reference to controlling loss is 8 percent, and 19 using that number in stress testing, I'm trying to 20 understand if that 8 percent is -- it corresponds to 21 stress testing that would show an 8-percent 22 reduction in NAV or an 8-percent drawdown from a 23 high water mark? Which are you referring to? 24 A. Well, the goal is to try and limit draw 25 downs to -- in the neighborhood of 8 percent, as</p> | <p style="text-align: right;">Page 151</p> <p>1 the portfolio in OptionVue? 2 A. Yeah. That's what we talked about today, 3 so, yeah. 4 Q. When you talk about stress testing or 5 stressing the portfolio in a open house call, you're 6 referring to OptionVue, correct? 7 A. That's the tool I used, yes. 8 Q. All right. If we could scroll forward to 9 page 17 of the transcript. And specifically in 10 line 11, starting at line 11. 11 So you can follow along with me. I'm 12 gonna read some of the -- what's reflected here from 13 page 17 over the next page, page 18. 14 So starting only page 17, line 11. You 15 state: Second, once I put on positions, and I do -- 16 obviously within a mutual found portfolio I put on 17 positions every day, pretty soon I accumulate 18 relatively complicated options positions or an 19 options portfolio, so that even if you understand 20 options fairly well, if you look at the portfolio 21 listing it for the Fund, it will be difficult for 22 you to understand where do these things come from 23 and what are they designed to do and how will they 24 be affected by the market? 25 So the good news is I have very</p> |
| <p style="text-align: right;">Page 150</p> <p>1 I -- as I mentioned here. And the tool I used was 2 to control that open option value. Because in my 3 experience, that allowed me to control draw downs to 4 8 percent -- or in the neighborhood of 8 percent. 5 Q. Right. When you say drawdown, I want to 6 make sure I understand what you mean. What do you 7 mean drawdown? Are you talking from a high water 8 mark of the Fund or just a drawdown in -- in the 9 NAV? 10 A. A drawdown in the NAV. You know, it's -- 11 the -- the 8 percent number apparently was used in a 12 lot of different context, a lot of different marks. 13 My hard and fast rule was to control the option's 14 premium value. My experience was that a monthly 15 time frame -- and I think that's why Catalyst put 16 the explicit 8 percent number in our internal risk 17 metrics -- was simply control of, you know, a 18 relatively short time frame drawdown to 8 percent, 19 so there's -- that's all I can say about that. I 20 guess I'm a little confused by what you're asking. 21 Q. Sure. We'll -- we'll -- let me -- it 22 might become clearer. But focus for the minute on 23 the references here in this house call is stress 24 testing. 25 Does that -- does that refer to stressing</p> | <p style="text-align: right;">Page 152</p> <p>1 sophisticated options pricing models. I plug the 2 portfolios into these models each day. I stress the 3 portfolio for a series of price movements up to 10 4 percent. I stress the portfolio for volatility 5 movements. Remember that volatility is the most 6 important component of options pricing. So I have 7 to understand what will happen to the portfolio if 8 one day you see the VIX go from 14 to 25 or 20 to 40 9 or something like that. So I stress the portfolio 10 for volatility, I stress it for price movement, and 11 then I look over five different time frames. A 12 month from today, two months from today, and several 13 time frames in between. I'll vary those time frames 14 to match up to different times that are important to 15 options, expiration for part of the portfolio, for 16 example. 17 So I stress the portfolio. I identify 18 what's the impact on the portfolio value at these 19 stress points. And if the impact is greater than my 20 8 percent limit, then I'll go in and I'll hedge the 21 portfolio to bring it back in line. 22 Okay. So in this portion of -- the 23 November 2014 -- November 4, 2014, house call, what 24 I just read, again, the sophisticated option was 25 pricing models. That's a reference to OptionVue; is</p> |

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1 that right?
 2 A. That's correct.
 3 Q. And this is an explanation of how you --
 4 how you control to 8 percent when stress testing, as
 5 referenced earlier in the call; is that -- that
 6 fair?
 7 MR. KOPECKY: Objection. Form.
 8 Foundation. Mischaracterizes the transcript.
 9 Go ahead, Ed. Try to answer that.
 10 A. So when you say this --
 11 BY MR. FOSTER:
 12 Q. Sure. Well -- here we go.
 13 We just looked at page 15, right? And on
 14 page 15 you said you would use risk management to
 15 control losses to roughly 8 percent. You say that's
 16 the number you use on stress testing.
 17 Okay. Now on page 17, over to page 18,
 18 you're describing that stress testing, correct, and
 19 how you use it to control to an 8 percent number?
 20 MR. KOPECKY: Objection. Form.
 21 Foundation mischaracterizes the transcript itself
 22 even. Go ahead, Ed.
 23 MR. FOSTER: That -- that's a question.
 24 He can answer it -- he can answer it yes or no. If
 25 that's not what he's doing, he can tell me what he's

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1 doing.
 2 MR. KOPECKY: It's an objection of a
 3 question. You're combining parts of the large
 4 transcript. You've taken the world control losses
 5 on one page. He's giving -- the thing you read is
 6 the second of one, two, three, that he was
 7 explaining. Right there he says stressing for
 8 volatility. You're combining things that should not
 9 be combined. That's what you're doing. And that's
 10 objectionable. He can answer the question and will,
 11 obviously, but your question is objectionable.
 12 MR. FOSTER: I got your objection. It's
 13 oceans away. And I have your --
 14 MR. KOPECKY: Good.
 15 MR. FOSTER: It's not even remotely --
 16 it's not even remotely what I'm doing. Not even
 17 remotely.
 18 MR. KOPECKY: Mike, you tried to argue
 19 with me about --
 20 BY MR. FOSTER:
 21 Q. Mr. -- Mr. Walczak -- Mr. Walczak,
 22 page 17, line 11 to page 18, 14 -- line 14 that I
 23 just read, okay? Is that what you did? Is this --
 24 this information accurate, what you said in this
 25 portion of the house call? Is that what you did in

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1 the portfolio?
 2 A. I think that's -- that's exactly how I
 3 described it to you before. In particular we can
 4 look at -- up there in the time frames to match up
 5 the different time frames, important options
 6 expiration, what part of the portfolio. I stress
 7 the portfolio if I see something that's greater than
 8 8 percent limit. I'll go ahead and hedge the
 9 portfolio to bring it back in line.
 10 I think that's how I described my process,
 11 so I don't have a big objection with that. But I
 12 also will agree that, you know, you want to take
 13 this in context and with -- and probably in context
 14 with all the other times in 2014 that I discussed
 15 risk management on these calls, which you probably
 16 did, too.
 17 Q. So when you say hedge the portfolio
 18 here -- hedge the portfolio to bring it back in
 19 line, what does -- what does that mean?
 20 What do you mean by hedge the portfolio?
 21 A. That means if I see a likely scenario, as
 22 I described earlier today, if I see a scenario that
 23 I believe to be likely enough to take action, that
 24 shows an 8-percent drop down, I'll go in and do any
 25 number of hedging procedures, including taking

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1 positions off, exiting positions, buying additional
 2 options as a hedge, buying and selling options to
 3 reduce the exposure by one expiration selling
 4 another. So a lot of different hedging techniques
 5 that I'll use to satisfy myself that I've taken a
 6 likely 8-percent loss and made it less likely or
 7 unlikely.
 8 Q. So -- so hedge the portfolio would mean to
 9 execute trades, right?
 10 A. Not necessarily.
 11 Q. Okay. How would you hedge the portfolio
 12 without -- without executing any trades?
 13 A. Well, if -- if options are wasting assets.
 14 So the risk of an option detains as time passes,
 15 generally speaking, all else equal. So in some
 16 scenarios, particularly short dated options, you
 17 look, you identify a potential risk point, and you
 18 know that that risk is deteriorating rapidly over
 19 time and no action's necessary.
 20 Q. So here you're describing stressing the
 21 portfolio at -- at given points, and you describe
 22 price movements and volatility movements, right?
 23 A. Correct.
 24 Q. And you say that you identify the impact
 25 on the portfolio value at the stress points.

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| <p style="text-align: right;">Page 157</p> <p>1 That's -- that's what you would do in stressing the 2 portfolio as described? 3 A. Yeah, which line are you referring to? I 4 don't remember the specific statement. 5 Q. Sure. On page 18, that's towards the end 6 of what I quoted. Right -- 7 A. That's what I mean, the open option value, 8 sure. 9 Q. So when you reference, My 8 percent limit, 10 what are -- what are you referencing? 11 A. Well, I think I -- I talked about that 12 earlier in this -- in this call. And that was to 13 say, Look, it's -- it's not a hard number. There's 14 lots of other factors. But that's, you know, a 15 guideline I use. That's a number I'm looking for in 16 terms of open option premium. And if I see a 17 scenario where I'm uncomfortable with how likely it 18 is that that happens, then I'll go in, and I'll take 19 whatever action necessary. Or I'll identify that 20 the scenario is unlikely and I won't do anything. 21 Or I'll identify the fact that doing nothing is also 22 a lot of risk to come off, because of the nature of 23 the options. 24 Q. Okay. Well, I understand that's what you 25 told me earlier. But I'm asking you very more</p> | <p style="text-align: right;">Page 159</p> <p>1 sound bytes. I object to it. It's objectionable. 2 Form. Foundation. Mischaracterization. 3 Mischaracterizes the transcript. 4 Go ahead, Ed, and do your best. 5 A. So, again, you know, I don't object to the 6 accuracy of this transcript, but I think it's 7 important that you understand, and especially 8 anybody who might view this record, that the intent 9 here is we have a sophisticated audience. I'm 10 describing what I do not in complete form, that's 11 what perspectives is for, but I'm trying to give 12 them a flavor for what I do and what I said at this 13 time was certainly accurate. But implicit in all of 14 my remarks are use of my professional judgment about 15 what -- what needs to be done and when it needs to 16 be done. These are certainly the techniques that I 17 use, as I described to you earlier today. 18 BY MR. FOSTER: 19 Q. Okay. But what you say here, sir, is that 20 if the impact of this the stress testing described 21 is greater than your 8 percent limit, you'll go in 22 and hedge the portfolio to bring it back in line. 23 That's what you state here in this house call, 24 correct? 25 MR. KOPECKY: Objection. Form.</p> |
| <p style="text-align: right;">Page 158</p> <p>1 specifically about what you said on this house call, 2 and -- and the page we're looking at, you said 3 impact was greater than 8 percent limit. And so 4 right now I'm just asking you what 8 percent limit 5 are you referring to? 8 percent of what? 6 A. What I always look at for -- for that 7 number is described in OptionVue. If the open 8 option value is greater than 8 percent of the 9 portfolio. 10 Q. And if it is, you say here that, I'll go 11 in and I'll hedge the portfolio to bring it back in 12 line. That's what you said here, right? 13 A. Yeah. And -- and, again, not to be 14 misleading in -- 15 Q. I'm -- I'm asking you -- I'm just asking 16 you that's what's reflected in the transcript, 17 correct? 18 A. Well, again, reflected in the transcript, 19 I -- I mean, this is -- 20 MR. KOPECKY: No. It misstates what is 21 said in there. It identifies the impact and the 22 portfolio these various stress points, then if it's 23 greater than a percent, he goes in and hedges to 24 bring it back in line. You're picking and 25 choosing -- you're unfairly picking and choosing</p> | <p style="text-align: right;">Page 160</p> <p>1 Foundation. Mischaracterizes the entire house call. 2 Go ahead, Ed, try again -- oh, and asked 3 and answered three times now. 4 MR. FOSTER: None of those are valid 5 objections. You may -- you can answer. 6 MR. KOPECKY: Your question's -- 7 A. I'm not writing an offering document, and 8 I'm not describing either verbally or in this 9 transcript, a comprehensive, detailed -- 10 BY MR. FOSTER: 11 Q. Sir, that's not my question. That's not 12 my question. My question, Are -- 13 A. Yeah, I understand. 14 Q. Are the words -- the words that appear on 15 the page, did I read them correctly? Are those the 16 words that appear on the page of the transcript? 17 A. Mr. Foster, I -- I apologize. We -- I 18 think we agreed not to talk over one another at the 19 beginning of the testimony, so if you allow me to 20 answer your question as completely and truthfully as 21 I can, that's all I ask. 22 Q. Well, sir, unfortunately, I don't have all 23 day. And you're taking up more than -- than the 24 time that's -- that's appropriate to answer these 25 questions. I've listened to all your</p> |

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| <p style="text-align: right;">Page 161</p> <p>1 contextualizations at this point. And at this 2 point, I really just want you to listen very closely 3 to the question I'm asking and answer that question 4 and that question only. 5 A. I'm doing the best I can, but I -- I 6 can't -- 7 MR. KOPECKY: Ed, I'm sorry, let's reset. 8 Go ahead, Mike, ask a question. 9 BY MR. FOSTER: 10 Q. So, Mr. Walczak, you say in this 11 transcript that if the stress testing that you 12 identify and explain here over pages 17 and 18, if 13 that stress testing reveals an impact on the 14 portfolio greater than your 8 percent limit, that 15 you'll go in and you'll hedge the portfolio to bring 16 it back in line. That -- that's what you said here, 17 correct? 18 MR. KOPECKY: Objection. That 19 mischaracterizes what that says, so form, 20 foundation, and mischaracterizes that transcript. 21 But go ahead, Ed. Is that what you say 22 there? 23 A. That's what I said, and I'll -- I have to 24 complete -- I have to continue to provide the 25 context in which I said that.</p> | <p style="text-align: right;">Page 163</p> <p>1 exhibit you say that you may, if your stress testing 2 reveals a impact on the portfolio that's in excess 3 of your percent limit, that depending on your 4 assessment of the likelihood or probability of the 5 scenario that you stressed, then you may go in and 6 hedge. 7 Where do you see that in this transcript? 8 A. So -- 9 MR. KOPECKY: Well, you haven't read the 10 whole transcript, have you, Ed? Do you want him to 11 pause and read all the pages? 12 MR. FOSTER: I think he's had ample 13 opportunity to read this transcript at this point. 14 MR. KOPECKY: He has not. You just asked 15 him if it said anywhere in this transcript. I'm 16 going to have him go back, and we're gonna read this 17 entire transcript. 18 Do you want to do that? 19 MR. FOSTER: Yeah, I wanted you to do that 20 when I -- when I served you interrogatories on this 21 very subject, that's what I wanted you to do. 22 MR. KOPECKY: Well, you got answers to 23 those interrogatories. If you want him to spend the 24 time here right now reading the whole transcript, 25 we'll do it.</p> |
| <p style="text-align: right;">Page 162</p> <p>1 BY MR. FOSTER: 2 Q. And you don't say -- you don't say that 3 you may go in and hedge the portfolio depending on 4 your assessment of the likelihood or probability of 5 that scenario materializes, right? You don't say 6 that. That's not what you say here, is it? 7 MR. KOPECKY: Objection. Again, in the -- 8 through this whole transcript and in with the 9 beginning of it referring to the prospectus, and as 10 he says about the stress points, yes, he does. So 11 you're mischaracterizing the transcript. I object. 12 Go ahead, Ed. 13 MR. FOSTER: Just state your objections. 14 I'm not asking you the questions, Jim, so you're -- 15 it's not your turn to testify about what it does or 16 doesn't do. 17 MR. KOPECKY: You -- you continue -- 18 you -- 19 MR. FOSTER: No, I don't. No, I don't. 20 MR. KOPECKY: You continue to misrepresent 21 what this says and that's -- 22 MR. FOSTER: No. No. 23 BY MR. FOSTER: 24 Q. It's a very simple question, Mr. Walczak. 25 Do you say that? Show me where in this</p> | <p style="text-align: right;">Page 164</p> <p>1 MR. FOSTER: Well, my -- I want him -- I 2 want him to answer the question. If you later, 3 outside of this deposition, can confine that for me 4 where you say that in here, I'm all ears. But I'm 5 asking you about this particular portion that we 6 just read through on pages 17 and 18. 7 MR. KOPECKY: Again -- 8 MR. FOSTER: That's my question. 9 MR. KOPECKY: That's a different question, 10 and I object to that. 11 MR. FOSTER: That's the question -- that's 12 the question I'm asking. That's the question I'm 13 asking, so please answer that question. 14 MR. KOPECKY: Okay. So want to repeat 15 that question again? 16 MR. FOSTER: All my questions right now 17 are focused on page 17 and page 18. 18 MR. KOPECKY: Okay. So, for the record, 19 then, you're agreeing that you're ignoring 20 everything else that's said in this transcript. 21 MR. FOSTER: Nope. No. Nope. That's -- 22 that's not at all what I'm saying. I'm just asking 23 a question about these particular pages. I don't 24 need to ask about the entire transcript. That's not 25 my question. So my question is about these -- this</p> |

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| <p style="text-align: right;">Page 165</p> <p>1 content, so --</p> <p>2 MR. KOPECKY: Just to make sure we're</p> <p>3 understanding.</p> <p>4 MR. FOSTER: Mr. Walczak, please -- no --</p> <p>5 THE REPORTER: I'm sorry. If you want a</p> <p>6 clear record, I advise you to speak one at a time.</p> <p>7 MR. FOSTER: Stop interrupting.</p> <p>8 MR. KOPECKY: I need to understand the</p> <p>9 question before I can let him answer.</p> <p>10 So do you want to try asking --</p> <p>11 MR. FOSTER: How do you not understand the</p> <p>12 question? How do you not understand the question?</p> <p>13 What's there not to understand?</p> <p>14 MR. KOPECKY: Because the question --</p> <p>15 you're saying you're not ignoring all of them, but</p> <p>16 then you're saying, I'm only focusing on 17, 18, and</p> <p>17 19.</p> <p>18 MR. FOSTER: Jim, I don't have -- I don't</p> <p>19 have time to debate. You -- you -- you are putting</p> <p>20 in argumentative and speaking objections. Just</p> <p>21 state your objection. It's noted for the record,</p> <p>22 and then I want the witness to answer my question.</p> <p>23 MR. KOPECKY: Ask your question. I'll</p> <p>24 state my objection.</p> <p>25 MR. FOSTER: I've already asked my</p> | <p style="text-align: right;">Page 167</p> <p>1 everything I did mention in the portfolio, and</p> <p>2 implicit in my remarks were -- are the metrics that</p> <p>3 I used. But the transcript words are correct in</p> <p>4 terms of the what I said, as far as I remember.</p> <p>5 BY MR. FOSTER:</p> <p>6 Q. And anywhere on page 17 or 18 of this</p> <p>7 transcript, do you say or explain that you're going</p> <p>8 to use discretion or judgment about the likelihood</p> <p>9 or probability of a scenario before deciding whether</p> <p>10 you go in and hedge the portfolio?</p> <p>11 Do you explain that here?</p> <p>12 MR. KOPECKY: Objection. Form.</p> <p>13 A. I believe those disclosures are contained</p> <p>14 in the prospectus, but, again, I'm not an expert.</p> <p>15 But the assumption -- my assumption in making these</p> <p>16 statements was that I did not need to pile on this</p> <p>17 disclosure about judgment and opportunities.</p> <p>18 BY MR. FOSTER:</p> <p>19 Q. Again, I'm not -- I'm not asking about</p> <p>20 the -- about the prospectus. I'm asking about the</p> <p>21 words you said on this particular house call. And</p> <p>22 you would agree with me, sir, you don't say or</p> <p>23 explain that if the impact is greater than your</p> <p>24 8 percent limit that you'll exercise discretion and</p> <p>25 decide whether or not to hedge the portfolio.</p> |
| <p style="text-align: right;">Page 166</p> <p>1 question five times. I'll ask it again.</p> <p>2 MR. KOPECKY: Okay. Can you read the</p> <p>3 question back?</p> <p>4 MR. FOSTER: Well, I'm not gonna -- I will</p> <p>5 read it again so the court reporter doesn't have to</p> <p>6 dig back past all your commentary.</p> <p>7 THE REPORTER: Please hold.</p> <p>8 Question: So, Mr. Walczak, you say in</p> <p>9 this transcript that if the stress testing that you</p> <p>10 identify and explain here over pages 17 and 18, if</p> <p>11 that stress testing reveals an impact on the</p> <p>12 portfolio greater than your 8 percent limit, that</p> <p>13 you'll go in and you'll hedge the portfolio to bring</p> <p>14 it back in line.</p> <p>15 That -- that's what you said here,</p> <p>16 correct.</p> <p>17 MR. KOPECKY: Objection. Form.</p> <p>18 Foundation. Mischaracterizes the transcript.</p> <p>19 Assumes facts not in evidence, and argumentative.</p> <p>20 Ed.</p> <p>21 A. Again, no, sir. My words and truthful and</p> <p>22 accurate in the context of the fact that I spoke in</p> <p>23 an informal question-and-answer session. I was not</p> <p>24 writing a prospectus. I was not attempting to</p> <p>25 provide a comprehensive and detailed description of</p> | <p style="text-align: right;">Page 168</p> <p>1 Rather, you say that if it exceeds your 8 percent</p> <p>2 limit, that you will go in and hedge the portfolio</p> <p>3 to bring it back in line, right, that's what you</p> <p>4 said?</p> <p>5 MR. KOPECKY: Objection. Form.</p> <p>6 Foundation. Mischaracterizes his testimony. Asked</p> <p>7 and answered. Argumentative.</p> <p>8 Go ahead, Ed.</p> <p>9 A. Again, I described my process, and I think</p> <p>10 this is a truthful and accurate reflection of my</p> <p>11 process. My intent here was to provide a flavor for</p> <p>12 how I managed the Fund, recognizing that in</p> <p>13 everything I did, I used my judgment, which I</p> <p>14 described to you earlier. Even in using these</p> <p>15 words, I was referring to scenarios past that</p> <p>16 judgment screen so that if I -- if I saw a scenario</p> <p>17 that was 8 percent and it was in my judgment likely,</p> <p>18 then I wouldn't go in and hedge it. And I didn't</p> <p>19 believe at the time, given the audience and the</p> <p>20 context of this call and others, that it was</p> <p>21 necessary to say that explicitly. I wasn't writing</p> <p>22 a prospectus.</p> <p>23 BY MR. FOSTER:</p> <p>24 Q. But, again, I'm not asking you about --</p> <p>25 I'm not asking about what was in your mind or what</p> |

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| <p style="text-align: right;">Page 169</p> <p>1 you thought or why you did what you did. I'm asking 2 you about the words you spoke. And you say here 3 that you -- the words are, I'll go in and I'll hedge 4 the portfolio to bring it back in line, not I'll -- 5 I may go in and hedge the portfolio to bring it back 6 in line, right? 7 MR. KOPECKY: Same objection. 8 A. The words are -- 9 BY MR. FOSTER: 10 Q. I'll -- I'll -- 11 A. I can't help you with the words. And so 12 I'm not going to tell you they're my words. But I 13 think the context is important. Otherwise, I can't 14 provide you misleading testimony, and that's the 15 only reason why I continue to try and provide 16 this -- this context, because the words are -- 17 Q. Mr. -- 18 A. But the context is -- 19 Q. Mr. Walczak, I'll -- the word, I 20 apostrophe L, that's an abbreviation for I will, 21 correct? 22 A. Yes, it is. 23 Q. Okay. So it's not an abbreviation for I 24 might or I may, right? 25 A. As far as I know, it's not.</p> | <p style="text-align: right;">Page 171</p> <p>1 Q. Sir, if you could turn your attention to 2 what's been premarked as Exhibit 4. 3 A. Okay. Got it. 4 (Exhibit 4 was marked for identification.) 5 BY MR. FOSTER: 6 Q. All right. And Exhibit 4 is a transcript 7 of a open house call from October 13, 2015. And if 8 you could turn your attention, starting at page 14, 9 lines -- 10 A. Okay. 11 Q. Line 23. So reading on from where, you 12 state that: In other words, we'll take a snapshot 13 of our portfolio within our options modeling 14 software and then we stress that portfolio against 15 price, volatility, and across time, because 16 obviously time is an important element to waste an 17 asset like an option. So we're on a daily basis, 18 we'll -- the portfolio in aggregate is plugged into 19 our options modeling software, and we'll stress 20 price moves of plus 5 and plus 10 percent on the 21 S&P, and minus 5, minus 10, and minus 15 percent on 22 the S&P. 23 We'll then -- we'll have snapshots of the 24 portfolio value at those P&L, basically at those 25 stress points. We will then stress volatility in</p> |
| <p style="text-align: right;">Page 170</p> <p>1 Q. The stress testing that you describe over 2 pages 17 and 18 of the transcript of this house 3 call, how often did you do that? 4 A. I did that on a daily basis. 5 Q. And you did that -- you did that on a 6 daily basis over -- over what time period? 7 A. I think I described my process to you 8 earlier today, so, again, I'm sorry to take up your 9 time, but -- but to repeat it to get your question 10 answered, each day I opened up OptionVue. Depending 11 on what was going on in the market and the 12 portfolio, some days I spent a lot of time on stress 13 testing, sometimes it was a pretty quick exercise to 14 understand that nothing had changed requiring my 15 action. In all cases, I looked at a market and 16 portfolio appropriate excursion of price and 17 volatility and made a judgment on whether there was 18 a likely scenario that required immediate action. 19 Q. Did the stress testing that you described 20 here in the -- in the house call, did you perform 21 that stress testing all the way over this -- the 22 time period of September 2013 to February 2017? 23 A. To the best of my recollection, as I said, 24 every day I came to work and upgraded the Fund. I 25 opened OptionVue and went through that process.</p> | <p style="text-align: right;">Page 172</p> <p>1 the current environment where we got a sub 20 VIX. 2 We stress the volatility to a 30 and to a 45. In 3 those environments where VIX is already above 30, 4 we'll stress an additional level up to 60. 5 So now we have price and volatility 6 stresses on the portfolio. We look at that across 7 five different time frames and what we're looking 8 for is a drawdown of greater than 8 percent in the 9 portfolio value. If we find that at any one of 10 those price and volatility stress points, we'll 11 identify whether it, for example, it's price or 12 volatility, which are the two major impacts. On the 13 portfolio we'll identify what is it that's causing 14 that potential 8 percent drawdown or greater than 8, 15 I'm sorry, that's our line in the sand, so to speak. 16 We'll identify what is it. Is it price? 17 Is it volatility? We'll then identify what hedging 18 transactions we need to put in place, and normally 19 there's a variety of choices. Via put, via put 20 spread, via call, via call spread, buy back a short 21 call, buy back a short put. Lots and lots of 22 alternatives, but we'll model the most effective 23 alternative to remove that risk excursion and then 24 we'll implement that position on the portfolio. So 25 that's what we do internally to manage the</p> |

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1 portfolio.
 2 All right. So I want to ask you some
 3 questions about that language in the house call
 4 transcript. Again, is the options modeling software
 5 being referenced, that's OptionVue?
 6 A. Yes.
 7 Q. In what I just read, at one point you
 8 said, We looked across -- looking at it across five
 9 different time frames, what we're looking for is a
 10 drawdown of greater than 8 percent in the portfolio
 11 value.
 12 So, again, what are you referring to when
 13 you say, Drawdown of greater than 8 percent in the
 14 portfolio value?
 15 A. Again, I always use the open option
 16 premium. That's what I look at in OptionVue.
 17 Drawdown value, negative option premium. To me, the
 18 language is critical. At least how I looked at it.
 19 Q. So measured from when or from what, a
 20 drawdown from what, the prior date's close? High
 21 water mark? What?
 22 A. Again, I didn't have -- that was the
 23 nature of these calls. I wasn't trying to provide a
 24 precise set of metrics or language. I was trying to
 25 say how I managed the portfolio, and that -- and how

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1 I managed the portfolio as, again, I described is
 2 when I saw 8 percent open option premium knowing
 3 that I entered spreads per cost, that meant there
 4 was risk in the portfolio that I needed to -- to
 5 manage again, as long as there was a scenario that
 6 had some level of likelihood. And that's my
 7 judgment.
 8 Q. Yeah, I'm really just focused on those
 9 words, The drawdown of greater than 8 percent in the
 10 portfolio value. It had -- that 8 percent had to be
 11 measured from something. So I'm asking measured
 12 from what? What were you measuring it from?
 13 A. Well, I -- I've -- again, I apologize for
 14 repeating it. Maybe I'm not being -- sorry if I'm
 15 not expressing myself. That's negative 8 percent
 16 option. That's what I meant when I said it. I
 17 don't know if later in the transcript somebody asked
 18 me, What do you mean by that? I don't know. I
 19 haven't read the whole transcript. But that's what
 20 I meant when I said it, because that's how I always
 21 managed the Fund to the 8 percent open option value.
 22 Q. So when you -- when you said you're
 23 looking for a drawdown of greater than 8 percent
 24 portfolio value, you meant -- you meant what
 25 exactly? You meant in excess of 8 percent of open

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1 option premium?
 2 A. Correct.
 3 Q. And how -- how did you know -- from what
 4 point -- from what date to what date?
 5 A. I didn't measure from date to date. I
 6 looked at -- you know, as I described, we looked at
 7 scenarios. We said where in price, time, and
 8 volatility is -- is there an 8 percent drawdown?
 9 Lots of places. Are any of them likely enough to
 10 take action? Yes, no. And take action if
 11 necessary. So I was simply -- and that is the
 12 reason why I use that measure. I didn't have to get
 13 tangled up in from when to where to how. But
 14 rather, if I -- my experience from a process
 15 standpoint. If I -- if I hold and react to a likely
 16 8 percent open option premium number, that's good
 17 risk control. It limits my drawdown.
 18 Q. Is an 8 percent open option premium valued
 19 the same as -- as an 8 percent drawdown in portfolio
 20 value? Are those the same things?
 21 A. I would say no.
 22 Q. What's the difference between the two?
 23 A. Whatever -- again, I didn't do fund
 24 accounting. So my experience was that if I control
 25 to the open option premium, it's -- it's effective

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1 in controlling my drawdown.
 2 Q. So if you're at 8 percent of open option
 3 premium, then -- then what -- what is the total open
 4 option premium? Where -- where is that number?
 5 From which to take the 8 percent?
 6 A. Well, that -- the open option premium
 7 value is what I measure using OptionVue, all the
 8 prior testimony that we went through about how
 9 OptionVue works and the values I look at.
 10 Q. Okay. Well, where in OptionVue do you
 11 find the total open option premium?
 12 A. That's what OptionVue tells. We talked
 13 pretty extensively about this. You asked me about
 14 screens. You asked me about curves and time frames
 15 and volatility. That's what OptionVue is modeling.
 16 How I use it, it's modeling the open option value
 17 contained in the portfolio or whatever positions I
 18 put them in. So that's why I'm looking for the
 19 8 percent number.
 20 Q. Okay. So is that different than say --
 21 would that number be different -- that number be
 22 depicted on the horizontal or vertical axis?
 23 A. On the vertical axis, yes.
 24 Q. Okay.
 25 A. It wouldn't calculate the percentage. It

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1 would -- it would be depicted in dollar terms.
 2 Q. Okay. On the -- on the left vertical or
 3 right vertical axis?
 4 A. Top of my head without looking at the
 5 screen, I can't tell. I can't remember.
 6 Q. So how do you get to a percentage from
 7 that open option premium value?
 8 A. Dollars divided by AUM.
 9 Q. So net dollar value of whatever positions
 10 you're modeling divided by AUM?
 11 A. Correct.
 12 Q. When you say that the 8 percent is -- you
 13 say that you'll -- on the portfolio will -- will
 14 identify what is it that's causing the potential
 15 8 percent drawdown or greater than 8, I'm sorry,
 16 that's our line in the sand so to speak, what did
 17 you mean when you said, Line in the sand?
 18 A. I meant that the 8 percent was the -- the
 19 line that I looked for -- in other words, so I had
 20 an objective level that I could look for if I found
 21 a scenario -- a likely scenario that's causing the
 22 drawdown, that's the level I used. So 7 percent,
 23 okay. 9 percent, not okay.
 24 Q. In your prior answer when you said
 25 dollars, you referenced dollars divided by AUM. AUM

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1 as of what date?
 2 A. The current AUM in the Fund. Whatever I
 3 was -- whatever day I was doing stress tests.
 4 Q. Okay. If there was a 2-percent loss a
 5 week prior, does the 8 percent reset?
 6 A. Not in terms of open option value, no.
 7 Q. All right. So here you're stating you
 8 identified any of the stress points. You identify
 9 price, volatility scenarios, and depicted loss of
 10 more than 8 percent. You modeled potential trades
 11 and implement a trade or series of trade so that
 12 OptionVue would no longer show loss or show that --
 13 that scenario in excess of 8 percent; is that right?
 14 A. Which -- which lines are you referring to?
 15 Q. Well, again, you're talking -- if you look
 16 here, you're talking about the five different time
 17 frames. We looked at that across five different
 18 time frames. We're looking for a drawdown of
 19 greater than 8 percent in a portfolio value. If we
 20 find that at any one of the those price volatility
 21 stress points, we'll identify whether it, for
 22 example, it's price and volatility, which are the
 23 two major impacts. And then you say, On a portfolio
 24 we'll identify what -- what is it that's causing
 25 that potential 8 percent or greater than 8, I'm

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1 sorry, line in our sand, so to speak. And identify
 2 what is -- what is it in the price of volatility
 3 that will identify what hedging transaction would
 4 put in place. And then you go on to say that, We'll
 5 model the most effective alternative to remove that
 6 risk of excursion, and then we'll implement that
 7 position on the portfolio, right?
 8 A. Again, if you can -- I wasn't following
 9 along. So if you want me to confirm the words, just
 10 give me lines. I'll read them to double check. It
 11 looks like page 15. To be conscious of your time,
 12 I'm finding those words on page 15. And so I'm
 13 agreeing that those are the correct words.
 14 Again, find a scenario, there's a
 15 likelihood and judgment test always. And so that's
 16 accurate. That's exactly what I would do in this
 17 particular environment, probably those levels were
 18 appropriate. I don't recall the portfolio
 19 composition or the market environment at this
 20 particular moment of this house call, but that's --
 21 that's my process. That's consistent with what I
 22 testified.
 23 Q. Okay. Again, so on that page -- on 15
 24 over 16, you say, We'll model the most effective
 25 alternative to remove that risk excursion. I'm now

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1 on page 16, starting at line 5: We'll model the
 2 most effective alternative to remove that risk
 3 excursion, and then we'll implement that position on
 4 the portfolio.
 5 Do you see that?
 6 A. Yes.
 7 Q. Again, will -- will implement that
 8 portfolio, W -- that position on the portfolio.
 9 W-e, apostrophe, I-I, is an abbreviation for we
 10 will, correct?
 11 A. Yes.
 12 Q. It's not an abbreviation for we may or we
 13 might, right?
 14 A. No. But, again, to -- to remind you the
 15 context of the words, it's not unusual to find a
 16 scenario and decide it's either unlikely and there's
 17 no action required. It's also not unusual to find a
 18 scenario to notice that the next T+7 timeline
 19 removes the risk stress, and to make the judgment
 20 that taking no action, wasting nature time decay and
 21 options would solve the problem. So that's also --
 22 that's one of the risks mitigation opportunities.
 23 It was certainly my intent when I gave this
 24 description that that was implied.
 25 Q. The information that we read from page 14

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|---|--|
| <p style="text-align: right;">Page 181</p> <p>1 over to page 16 of this open hall -- open house call 2 transcript, do you believe these are accurate 3 statements? 4 A. Well, on page 14, there's an odd 5 looking -- must have been a typo, so I'm not sure 6 what it meant, it's got more mature prophecies in 7 place. That's what that means. 8 So what was your question again? I'm 9 sorry. 10 Q. Are the statements that you made between 11 pages 14 and 16 of this house call transcript 12 accurate? 13 A. Again, I have to remind you the context in 14 my meeting, but I -- as I described, this is a -- 15 this is a very accurate, generic, and truthful 16 description of my process. 17 Q. Okay. You refer to it as generic, and I 18 think you used that language about the prior house 19 calls. Was -- was there a form in which you 20 provided more, you know, specific and less generic 21 information to interested financial advisors or 22 investors about your stress testing process? 23 A. Yeah. I mean, across all these house 24 calls, including the one out of -- I don't know how 25 many that you selected here. All of them had the</p> | <p style="text-align: right;">Page 183</p> <p>1 managing the portfolio. 2 Q. How would someone listening to the house 3 call know whether your description was generic or 4 not? How would they know that? 5 A. I think they would probably ask if they 6 wondered. That would be my expectation, at least 7 from a group of reasonably sophisticated investors. 8 Q. How did you know the -- the audience of 9 the open house calls were sophisticated investors? 10 A. Catalyst told me that they were. 11 Q. Who did? 12 A. Catalyst. 13 Q. Catalyst. Who at Catalyst told you that? 14 A. Well, when Catalyst asked me to do the 15 calls, they said they were only financial advisors 16 they had on this call. And they were qualified, 17 sophisticated investors. 18 Q. And who at Catalyst asked you to 19 participate in the open house calls? 20 A. Jerry Szilagyi, you know. In principal 21 meeting, he said, Ed, I need you to do these. And 22 specific scheduling was done by a whole variety of 23 people in marketing. 24 Q. When you -- when using -- AUM stands for 25 assets under management, right?</p> |
| <p style="text-align: right;">Page 182</p> <p>1 opportunity for follow-up question if there was some 2 question or need for more specifics by the audience. 3 And, again, I mentioned that I understand 4 they were distributed or available. So even with -- 5 if someone had a question, What did you mean by 6 that, I was certainly open to it, but I don't recall 7 receiving any. 8 Q. Yeah, I'm not asking about whether you 9 received questions about -- about what you said on 10 house calls. You're describing these -- the words 11 you used as generic descriptions of the stress 12 testing process. I'm asking if -- if in any form, 13 whether it be on a house call or otherwise, you 14 provided a more detailed, what you would consider to 15 be less generic description of how you stressed the 16 portfolio in OptionVue? 17 A. I don't recall. As I said, the 18 descriptions of this were fairly few and far 19 between. So there were a lot of house calls, a lot 20 of advisor calls. So did my description move 21 according to what I was doing at the time and the 22 portfolio marketing conditions, it may have, but I 23 don't remember for sure what words I used. Again, 24 not providing a prospectus or providing a detailed 25 description of all the activities involved in</p> | <p style="text-align: right;">Page 184</p> <p>1 A. I'm sorry. I didn't -- I didn't hear that 2 word. 3 Q. Sure. I apologize. The acronym AUM. 4 A. Yes. 5 Q. That means assets under management, 6 correct? 7 A. Yes. 8 Q. So when using AUM to determine the 9 8-percent drawdown limit, did you ever measure that 10 8 percent from the Fund's historic high water mark? 11 A. First of all, I don't know that there's 12 really an 8-percent drawdown limit. As I said, I 13 managed to an 8 percent open option premium number. 14 Catalyst, including their risk, controls 15 an 8-percent 30-day rolling trigger to ensure that 16 if the 8 percent open option premium or something 17 else wasn't working, my judgment, for example, if 18 that was incorrect and we saw an 8-percent rolling 19 drawdown, that would get an all-hands-on-deck 20 situation to figure out if there was a problem, what 21 to do. But there wasn't a limit at all. That's -- 22 yeah, that's not a good word. 23 Q. What's not a good word? Limit? 24 A. Correct. 25 Q. My question's a little different.</p> |

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1 When you're using AUM to calculate 8
2 percent open option value that you measured from the
3 Fund's historic high water mark. That's my
4 question.

5 A. No. My measurement was current AUM,
6 current open option premium, or projected open
7 option premium. But current AUM was the number I
8 used.

9 Q. All right. And so when I was referencing
10 8-percent drawdown limit, you told me that's not a
11 good phrase.

12 A. We've got some audio feedback happening.
13 Okay.

14 MR. BYLINA: I'm sorry, guys. That was
15 me. I had to shut the -- Steve Bylina. I had to
16 shut off my computer and go to my phone. So I
17 apologize for that. But that's the phone I have.
18 That's me.

19 THE WITNESS: All right. So, I'm sorry,
20 your question was, again?

21 BY MR. FOSTER:

22 Q. You corrected me in response to one of my
23 questions when I referenced an 8-percent drawdown
24 limit. You said limit was not a good word, not a
25 correct phrasing. Is that what you told me?

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1 A. Correct.

2 Q. Okay. But isn't that the word you used --
3 you didn't use the word limit in just the prior
4 house call we looked at -- or one of the ones,
5 November 4, 2014 house call?

6 A. I don't remember. If so -- again,
7 context, and the reason I objected to the word is
8 there's, as I said, on a number -- I think I said on
9 a number of those calls, there were no guarantees.
10 Even on that -- this transcript or the other one,

11 there was definitely my saying that there was no
12 guarantee, because it's important. It's a goal.

13 Q. Right. So to that point, I mean, in --
14 when you're seeing in these house calls statements
15 by you that you modeled 8 percent, right, but that
16 doesn't mean -- that doesn't mean in the real world,
17 in the actual market conditions, that draw won't
18 exceed 8 percent, correct?

19 A. That's correct.

20 Q. Okay. But what you're conveying is that
21 you're taking proactive steps in an attempt to avoid
22 such a drawdown by modeling to an 8 percent
23 threshold, correct?

24 A. By modeling the old option preview, but
25 that's correct.

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1 MR. FOSTER: Okay. I'm gonna mark through
2 a couple more of these. Let me take a five-minute
3 break.

4 VIDEOGRAPHER: Going off the record at
5 2:59 p.m.

6 (Recess taken.)

7 VIDEOGRAPHER: We're going back on the
8 record at 3:14 p.m.

9 BY MR. FOSTER:

10 Q. Sir, if you could take a look at what's
11 been premarked Exhibit 5. And that's the transcript
12 of March 1st, 2016, open house call.

13 A. All right. I have it here.

14 (Exhibit 5 was marked for identification.)

15 BY MR. FOSTER:

16 Q. All right. If I could direct your
17 attention to the discussion on page 27 over to
18 page 28. In particular, starting at line 5 on
19 page 27. Let me know when you've had a chance to
20 read that.

21 A. Just page 27?

22 Q. I'm sorry, 27 to 28.

23 A. Okay. Okay.

24 Q. So this is the house call. Again, you're
25 discussing how the stress -- the portfolio for

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1 changes in price moves and volatility movements?

2 A. I see that, yes.

3 Q. And after describing that process, and you
4 give examples of, you know -- if markets of
5 5 percent or 10 percent and stress points related to
6 volatility declines or increases in saying, We have
7 a collection of stress points. And after that, you
8 say, And what we are looking for at each of those
9 stress points is an 8-percent drawdown in the value
10 of the Fund.

11 So, again, there you -- you're referring
12 to -- when you say 8-percent drawdown in the value
13 of the Fund, what are you referring to?

14 A. Yeah, as I've mentioned before, I thought
15 numbers were a pretty good correlation with the
16 value of the Fund and value of the open option. So
17 that's what I opened in OptionVue.

18 Q. So just so when we get an 8-percent
19 drawdown and the value, you're looking for those
20 stress points, an 8-percent drawdown in the value of
21 the Fund -- okay. And you described -- I think you
22 described what that means. That's not a reference
23 to a drawdown from the high water mark?

24 A. That's not what I meant when I said this,
25 because I -- like I said, I looked at open option

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| <p style="text-align: right;">Page 189</p> <p>1 premium, so...</p> <p>2 Q. Do you know what the Fund's high water</p> <p>3 mark was?</p> <p>4 A. No.</p> <p>5 Q. Do you know when it achieved its high</p> <p>6 water mark?</p> <p>7 A. No.</p> <p>8 Q. Was that -- was that a data point that you</p> <p>9 were familiar with on a day-to-day basis in managing</p> <p>10 the Fund?</p> <p>11 A. No, I didn't look at it on a day-to-day</p> <p>12 basis.</p> <p>13 Q. Did you look at -- look at it at all for</p> <p>14 any purpose?</p> <p>15 A. I don't recall. It wasn't something I</p> <p>16 paid a lot of attention to.</p> <p>17 Q. And why was that?</p> <p>18 A. I'm not sure how to answer that. There</p> <p>19 were a lot of things I paid close attention to.</p> <p>20 Q. Did you ever tell people that you were</p> <p>21 monitoring the funds from a perspective of where</p> <p>22 it's good with respect to its high water mark?</p> <p>23 A. I don't -- I don't remember if I talked a</p> <p>24 lot about high water mark. I used to pay attention</p> <p>25 to high water mark in the Fund's predecessor. But I</p> | <p style="text-align: right;">Page 191</p> <p>1 and find his personal investment down 8 percent, or</p> <p>2 fund down 8 percent from whenever it came in. So,</p> <p>3 yeah, this refers to some kind of high water mark.</p> <p>4 I mean, I was trying to explain the genesis of how I</p> <p>5 set the risk parameters, which is back in the</p> <p>6 predecessor fund days where we monitor draw downs on</p> <p>7 a monthly basis.</p> <p>8 But my response to you is that it's not</p> <p>9 something that changes every morning and looked and</p> <p>10 said, Where are we in a relation to our high water</p> <p>11 mark? When was our last high water mark? Unless we</p> <p>12 got into a period of difficulty where that became</p> <p>13 important.</p> <p>14 Q. Right. So on page 29, reading on, you</p> <p>15 know, 19, you say: We stress the portfolio across</p> <p>16 number of different dimensions. We look for where,</p> <p>17 what conditions might cause a greater than 8 percent</p> <p>18 drawdown. We then model hedging techniques, meaning</p> <p>19 the purchase and sale of additional options</p> <p>20 contracts, either ones we already hold -- taking</p> <p>21 positions off is one thing we model, adding</p> <p>22 additional positions as hedges is another thing that</p> <p>23 we model and that's our most common adjustment.</p> <p>24 We'll model adjustments. We'll choose the most</p> <p>25 economical and effective adjustment to bring us back</p> |
| <p style="text-align: right;">Page 190</p> <p>1 don't remember if I talked much about high water</p> <p>2 marks in a mutual fund context.</p> <p>3 Q. Whether you talked -- whether you recall</p> <p>4 talking about it or not, if I understand your</p> <p>5 testimony, you're telling me it was not a data point</p> <p>6 that was important to you in managing the Fund?</p> <p>7 A. Not on a day-to-day basis, no.</p> <p>8 Q. Well, if not on a day-to-day basis, over</p> <p>9 any other time period, was an important data point</p> <p>10 for you in managing the Fund?</p> <p>11 A. I would say that, you know, when I went to</p> <p>12 a period where we had some downside volatility, we</p> <p>13 start to look at the, you know -- the depths of</p> <p>14 where we were from a recent high period of time.</p> <p>15 Q. If you turn over to -- jump over to</p> <p>16 page 29 around line 19, the transcript states that:</p> <p>17 We stress the portfolio across a number of different</p> <p>18 dimensions. We look for where, what conditions</p> <p>19 might cause a greater than 8 percent drawdown.</p> <p>20 If I understand that when you use those</p> <p>21 words, 8-percent drawdown, you're, again, referring</p> <p>22 to this open option premium that we've discussed?</p> <p>23 A. Well, in this case, it's more talking</p> <p>24 about -- as you can see in the context, it's more</p> <p>25 talking about investor kind of fund at a bad time</p> | <p style="text-align: right;">Page 192</p> <p>1 in bounds so that we can no -- so that we can no</p> <p>2 longer find a stress point that will result in</p> <p>3 greater than an 8 percent drawdown.</p> <p>4 That's what those lines in the transcript</p> <p>5 say, right?</p> <p>6 A. Yes.</p> <p>7 Q. All right. So it's actually stated pretty</p> <p>8 clearly in here that if you find a stress point that</p> <p>9 will result in a greater-than-8-percent drawdown,</p> <p>10 you will buy and/or sell options so that the</p> <p>11 negative impact to the Fund's value at that stress</p> <p>12 point will no longer exceed 8 percent?</p> <p>13 A. Again, I apologize for being repetitive.</p> <p>14 But it's obviously a scenario at least to me and my</p> <p>15 attentiveness where you can always find a scenario</p> <p>16 where there was an 8-percent drawdown. So implicit</p> <p>17 my remarks are a scenario that, in my judgment in</p> <p>18 market conditions and portfolio conditions, it's</p> <p>19 like a -- likely enough to do so.</p> <p>20 Q. Yeah, the scenarios, you -- would you</p> <p>21 agree the scenarios there that are being talked</p> <p>22 about are not just any scenario. They're the</p> <p>23 specific scenarios that you're describing that you</p> <p>24 stress for, you know, given -- given increments of</p> <p>25 increases or decreases in price, and -- and</p> |

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|--|---|
| <p style="text-align: right;">Page 193</p> <p>1 increases or decreases in volume, and you're 2 specifying what those -- what those increments are 3 that you model to, correct? 4 A. Yeah, and as I -- I think I mentioned 5 earlier, here's my goal to give a flavor and generic 6 description of the process. So those are very good 7 scenarios in a normal, average portfolio composition 8 and in some kind of general market conditions. But, 9 again, not appropriate to apply these kinds of 10 things to every single market condition, appropriate 11 to provide an explanation in terms that are 12 hopefully understandable to the audience, in terms 13 of -- rather than talk about sigmas and VIXs and 14 Greeks, this is a good way to -- for them to 15 understand the techniques I used, and I did use 16 these techniques. 17 Q. All right. But you would agree with me 18 when you're not in these house calls or the other 19 ones we looked at, you're not talking about, you 20 know, whether you confined any 8-percent drawdown at 21 any, you know, possible scenario. You're talking 22 about particular scenarios of volatility combined 23 with -- with price that -- that you were considering 24 in stressing the Fund, right? 25 A. But most importantly in these house calls,</p> | <p style="text-align: right;">Page 195</p> <p>1 economical and effective adjustments to bring us 2 back in bounds so that we can no longer find a 3 stress point that would result in greater than an 4 8 percent drawdown, right? 5 A. That's right. That's what the transcript 6 says, yes. 7 Q. So you're speaking in terms of what is -- 8 what is reflected in OptionVue, not a -- not what is 9 probable or likely in your own judgment, right? 10 A. Well, again, OptionVue is a tool. So I'm 11 using my judgment how I apply the tool. So it's not 12 a mechanical system. It's not driven by OptionVue. 13 It's me making judgments using OptionVue as a tool 14 to help me with those judgments. And, again, I 15 think that's why I, as the portfolio manager in the 16 house call, describing how I use this judgment and 17 what tools you would, I guess, to -- to make the 18 risk return trade-off. 19 Q. Isn't the whole point of modeling to model 20 for somewhat extreme events and estimate how the 21 Fund will perform? 22 A. That wasn't how I used the tool. At least 23 not extreme in the sense of highly unlikely. 24 Q. Were you using the tool to model what 25 would happen in a worst-case scenario?</p> |
| <p style="text-align: right;">Page 194</p> <p>1 I was not providing a prospectus or disclosure 2 document. I was providing, as transparently as I 3 could to sophisticated investors, the description of 4 the techniques I used to stress the portfolio. I 5 didn't feel like anyone was depending on the exact 6 10, 15, 30 percent, because I didn't think it was 7 actually meaningful to them. 8 Q. And according to the discussion here, 9 right, the crux of the issue was what your stress 10 test shows, right? I mean, you're stating that you 11 modeled the 8 percent. That's the number you used 12 in stressing the portfolio, right? 13 A. As I described, that's -- that's the 14 number I looked for, and then identify whether 15 that's a number which you can host -- that is a 16 reasonable scenario, given the -- 17 THE REPORTER: I'm sorry. The last part 18 of your answer cut out. That's a reasonable 19 scenario given the -- 20 THE WITNESS: Portfolio composition and 21 market conditions. 22 THE REPORTER: Thank you. 23 BY MR. FOSTER: 24 Q. So, you know, on page 30, you say, We'll 25 model adjustments. You say, We'll choose the most</p> | <p style="text-align: right;">Page 196</p> <p>1 A. Not a worst-case scenario, no. 2 Q. All right. Let's take a look at 3 Exhibit 6. And Exhibit 6 is a transcript of a house 4 call that occurred on March 29th, 2016. If I could 5 direct your attention to page 18 of the exhibit, 6 Mr. Walczak, starting at about line 19. 7 Have you found that line? 8 A. Yes. 9 (Exhibit 6 was marked for identification.) 10 BY MR. FOSTER: 11 Q. Okay. Thank you. 12 So on page 18, beginning on line 19, you 13 stated: Many of you on the phone have heard my 14 description of our risk management. Our risk 15 management is designed to control our drawdowns to 16 8 percent. And, in fact, our largest drawdown since 17 2007 has been a little bit higher than 8 percent. I 18 want to say it might have been 8.5. 19 But that's what we do -- that's what we 20 control to, and we do that with fairly extensive 21 modeling stress testing -- I'm sorry, with fairly 22 extensive portfolio stress testing and modeling. 23 Meaning, we'll stress the impact on a portfolio on a 24 daily basis for 5, 10, 15, and sometimes 20 percent 25 price moves, for volatility moves as high as a VIX</p> |

| | |
|--|---|
| <p style="text-align: right;">Page 197</p> <p>1 of 45, and we do that across many time frames. And 2 our intention is to, in this case, we do like to 3 front run risk and that is to anticipate if -- 4 what's the worst possible scenario we might 5 experience and are we sufficiently hedged to limit 6 the drawdown in that scenario to 8 percent. 7 Do you see that? 8 A. I do. 9 Q. Is that an accurate description of how you 10 stressed the portfolio using OptionVue? 11 A. Absolutely. My goal here -- and this is 12 starting to sound a little more familiar. My goal 13 here is to demonstrate the flexibility of how stress 14 could apply 5, 10, 15, sometimes 20, if things are 15 volatile. Sometimes as high as a VIX of 45, lots of 16 time frames. And what's the worst possible scenario 17 we might experience, given the current market 18 environment. And, again, that's not the worst 19 possible scenario that might happen, 20 Black Monday 1987. That's the worst possible with 21 a -- with any kind of likelihood in my estimation 22 that makes some sense to take action of. And that's 23 the intent of this type of description. 24 Again, I have to continue to emphasize the 25 context here. This is informal Q&A with</p> | <p style="text-align: right;">Page 199</p> <p>1 number, but I don't remember where or how it was 2 computed. 3 Q. Again, fairly extensive portfolio stress 4 testing and modeling is the reference to OptionVue? 5 A. Correct. 6 Q. And here you say that, We'll stress the 7 impact on a portfolio on a daily basis for 5, 10, 8 15, and sometimes 20 percent price -- price moves. 9 Is that true? Did you do that on a daily basis in 10 the period of 2013 to 2017? 11 A. I did on a daily basis, as I mentioned, 12 several times now. How -- I apologize. I don't 13 want to be impatient. It's getting late in the 14 afternoon. On a daily basis, I opened up OptionVue. 15 Sometimes there's a need to spend a lot of time on 16 stress testing. Sometimes there was -- based on the 17 portfolio composition and market conditions. But 18 all or nothing could change. So it was a 19 perfunctory sort of look, a quick look, and then on 20 to other business related to the Fund. On a daily 21 basis, I did some form of stress testing. 22 Q. And you referenced here that the intention 23 is to front run risk and anticipate what's the worst 24 possible scenario that you might experience. 25 Those are the words you used, right?</p> |
| <p style="text-align: right;">Page 198</p> <p>1 sophisticated investors. And I'm open to follow-up 2 questions, if there's some lack of clarity in their 3 minds when they hear me say these things. But 4 that's -- I intended -- I think I accurately 5 described my process. 6 Q. Right after you say, Our management is -- 7 our risk management is designed to control our 8 drawdowns to 8 percent. You say, And, in fact, our 9 largest drawdown since 2007 has been a little higher 10 than 8 percent. 11 When you reference your largest drawdown 12 since '07, what were you referring to? 13 A. I don't recall where the 14 8-and-a-half percent number came from, but my 15 attempt there was to also make people understand 16 that we were managing to a goal, not a hard line in 17 the sand that they could certainly see 8 percent. 18 But over time we've been recently successful. 19 Fingers crossed that we were able to continue. 20 Q. When you say that, Our largest drawdown 21 since 2007 is a little higher than 8 percent, 22 were -- are you referring to open option premium, or 23 are you referring to something else there? 24 A. I don't remember what I was referring to 25 there. It's likely to be an action performance</p> | <p style="text-align: right;">Page 200</p> <p>1 A. Again, I apologize for the language, but I 2 had to describe to what I meant. 3 Q. Okay. Why are you apologizing for the 4 language? 5 A. Well, I didn't draft this in advance. As 6 I said, I wasn't writing a prospectus. I wasn't 7 choosing my words from a legal or regulatory 8 context. I was just doing my best in a 9 conversational question and answer to describe my 10 techniques. 11 Q. So in your testimony, what you were 12 actually doing was -- was trying to determine 13 what -- what the worst-probable scenario you might 14 experience? 15 A. Yeah, again -- 16 Q. Worst possible? 17 A. You could choose a lot of different words. 18 My intent and my -- process was to evaluate 19 scenarios, use suggestion about the likelihood of a 20 particular scenario, which resulted in 8 percent 21 open option premium. And if I felt that the risk or 22 tradeoff requirement takes some action at that 23 8 percent level, then I did. And many times I did. 24 Or many times I took the course of action. So, you 25 know, I think there's some accurate description in</p> |

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1 the process. Again, the language was not subject to
2 compliance review or -- or meant to be a full
3 description of -- of the Fund or -- or the highest
4 level detail in my process.

5 Q. Why would a -- I'm not sure I get your
6 reference to a compliance review. Did -- was --
7 who -- who was the individual at Catalyst that was
8 most familiar with how you ran the strategy? You,
9 right?

10 A. Well, I wasn't the Catalyst. That was
11 just the guy that hired them on the options --

12 Q. Well, you're the portfolio manager, right?

13 A. Yes.

14 Q. You were the portfolio of the
15 Hedged Futures Strategy Fund at all times relevant
16 to this lawsuit, right?

17 A. Yes, that's correct.

18 Q. No one knew the strategy better than you,
19 correct? There was no one at Catalyst, either in
20 compliance or otherwise, that was more familiar than
21 how you ran the Fund than you, right?

22 A. I would say that's fair, yeah.

23 Q. What's -- let's see if we can keep
24 marching on here. If you go to -- pull up
25 Exhibit 7, what was premarked as Exhibit 7, which is

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1 a house call transcript for a call that occurred on
2 June 7, 2016. And directing your attention to
3 page 23. While you're getting there, I'm going to
4 publish this in Egnyte.

5 A. Sorry, what page did you ask me to go to?
6 (Exhibit 7 was marked for identification.)

7 BY MR. FOSTER:

8 Q. Sure. Mr. Walczak, it's page 23.

9 A. Okay.

10 Q. Starting on -- starting on line 1. If you
11 could take a moment to review lines 1 through 24.

12 A. Okay.

13 Q. Would you agree there's another house call
14 in which you're discussing how you stress the
15 portfolio in OptionVue?

16 A. Yeah. This is a good example of stressing
17 to the downside. So it's -- yeah. So I agree it's
18 definitely a description finally of downsiders.

19 Q. Okay. And I'll just -- this one's maybe
20 not as long as some of other ones we have been
21 looking at. So let me just quickly read those
22 lines, starting on page 23, line 1: We're stressing
23 the portfolio using some pretty sophisticated
24 modeling tools, and then, when we find an
25 out-of-bounds situation, so to speak, we then jump

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1 right back in. We have a whole tool set of risk
2 management antidotes, so to speak, in the form of
3 options, contracts, and positions we already use to
4 try and make some money. So we jump in and we move
5 our strikes around, and we buy and sell different
6 put options until that risk goes away. And that's
7 what we do as kind of a risk management overview.

8 So we like to be in a position and, in
9 fact, we are -- I can't remember, since 2007 that we
10 were not in this position. There's never a scenario
11 where we wake up one day and there's a panic in the
12 market, and we scratch our heads and say, oh, my
13 gosh, we've got to get out of that position. We've
14 got to do something.

15 We try to be a couple chess moves ahead of
16 that part of the portfolio management, because we
17 modeled that scenario a week ago, and we already
18 took steps so that if the market is down 5 percent
19 tomorrow that was part of our model from a week ago,
20 and either didn't cause us a problem in the model,
21 so we're fine, or it did cause us a problem, and
22 it's already fixed before it happens. That's the
23 type of approach we like to take.

24 So is that -- is that description of how
25 you stress the portfolio accurate?

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1 A. Yeah, absolutely. As I said, it's a
2 description of how we prepare for downside
3 volatility. In this particular one, referencing the
4 drawdown of 2007, which is the downside drawdown,
5 panic in the market, and down 5 percent tomorrow.
6 So that's -- I think someone must have asked -- I
7 don't see what the question was, but someone must
8 have asked about what happens if there's a crash,
9 and that was my response.

10 Q. The reference to out-of-bounds situation,
11 what does that -- what does that mean?

12 A. Yeah, again, I'm just talking about
13 looking at, once again, open option premium. This
14 one would be on the good side probably, but -- and
15 talking about exceeding that open option premium
16 metric that we pay attention to.

17 Q. And so when you say you'll jump right back
18 in, you're describing adjusting the portfolio
19 through trading, correct?

20 A. Yeah. This -- in this example, yes.

21 Q. And moving strikes around, in particular,
22 is one thing you mentioned?

23 A. Yes.

24 Q. All right. Is that the same basic
25 process -- is that the same basic process described

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1 in the other calls we reviewed?

2 A. Like I said, this is the downside
3 scenario. And, again, I know that we've been, once
4 again, taking small portions of 30-page or 25-page
5 documents, so context is everything. I don't know
6 what question was asked. I don't know what the tone
7 of the conversation was. But this is a good example
8 of describing what would happen in the market panic,
9 which must have been the question someone --
10 somewhere in here.

11 Q. Well, for the above-the-market call
12 strategy, was -- did this same basic sentiment ring
13 true? Did you try to be a couple chess moves ahead
14 from a risk management perspective?

15 A. Yeah, that was my intention -- it was
16 my -- that was my goal for sure.

17 Q. And you -- and you -- and you did that
18 by -- via modeling scenarios in OptionVue that could
19 result in a drawdown in excess of 8 percent,
20 correct?

21 A. The open option premium is what I modeled
22 as I testified, yes.

23 Q. Okay. Let's go to the next exhibit, sir,
24 Exhibit 8. I'm sorry. Hold on. I think -- let me
25 make sure I have the right one. Okay. It looks

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1 we're -- I'm sorry, I have Exhibit 7.

2 A. Oh, did you want -- I'm not sure. I think
3 I've got 8. Did you say you say 7?

4 Q. Yeah, sorry. Bear with me one moment.

5 MR. KOPECKY: We were just on 7, I think.

6 THE WITNESS: That's what I thought, too.

7 MR. FOSTER: Okay. We have 7. All right.

8 Good. Sorry, I just haven't moved it into the
9 marked exhibits folder. So, yeah, let's focus on 8,
10 please.

11 THE WITNESS: Okay. I've got 8.

12 (Exhibit 8 was marked for identification.)

13 BY MR. FOSTER:

14 Q. Okay, 8 -- 8 is a house call -- a
15 transcript of a house call dated December 13, 2016.

16 And if you direct your attention beginning --
17 beginning on page 40, line 23 of the transcript.

18 And at -- starting at about line 23 on page 40,
19 there's -- there's a question posed by a listener,
20 someone that's called in, and then your response.

21 Do you see that?

22 A. Yes.

23 Q. And it says -- the question reads: A
24 couple of times you've mentioned that, you know,
25 you're always worried about capital preservation,

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1 and you've mentioned like an 8-percent loss. If you
2 hit an 8-percent loss at any point in time, you
3 know, I'm just interested in what exactly would
4 happen.

5 And then your response follows. Do you
6 see that?

7 A. Yes.

8 Q. Okay. And you -- you know, the first part
9 of your response reads: Yeah, what we generally do
10 is we model our exposure. We stress both portfolios
11 looking out at various price points and volatility
12 changes up and down in -- certainly in the S&Ps, and
13 then in each of the commodity markets that we trade
14 in with the goal of holding that loss to 8 percent.

15 And we do that by identifying where -- you
16 know, that's the one predictive thing we do. It's
17 on the risk side. We continue to talk about how we
18 react to the markets -- to markets in terms of
19 entering positions and adjusting positions.

20 We do try to anticipate market moves in
21 terms of the risk presented to the portfolio. And
22 what that amounts to is we do have a hard stop at
23 8 percent. We would flatten the portfolio roughly
24 at 8 percent. The portfolio at 8 percent.

25 I want to stop there for a second. When

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1 you say that, We have a hard stop at 8 percent, what
2 do you mean?

3 A. Yeah, you know, again, this is a little
4 bit back in time, but there's -- the other way we
5 use the 8 percent number is if -- if we somehow
6 aren't successful on being forward looking
7 adjustments and we do hit that 8 percent open option
8 premium, then we do our best to flatten the
9 portfolio. I think I mentioned some -- some
10 slippage and, you know, talk about 8-and-a-half,
11 9 percents or thereabouts, with the goal of
12 achievements. So 8 percent is the number that --
13 like, hard stop means, look, at 8 percent, we can't
14 start. That's the point in which my judgment goes
15 out the window about likelihood, and then we have to
16 take very aggressive action.

17 Q. Okay. Well, you say here, We do try to
18 anticipate market moves in terms of the risk
19 presented to the portfolio, and what that amounts to
20 is we do have a hard stop at 8 percent. So is the
21 hard stop at 8 percent referring to anticipating
22 market moves, or you're referring to what happens
23 when there is an actual move that results in an
24 8-percent drawdown.

25 A. Well, again, this is a realtime off the

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1 cuff. I didn't go back and edit words. So did I
2 choose the right words? I don't know. What it
3 means is I think it's very consistent and still is.
4 If we hit the 8 percent open option premium, if we
5 hit an 8-percent drawdown, we are going to take some
6 pretty aggressive action.

7 Then, again, anticipating market moves,
8 it's back to the old scenario of looking forward and
9 saying, Let's likely -- let's try to anticipate what
10 they say. Trying to sense in terms of modeling, if
11 we see something happening out there, we'll get in
12 and take action, if necessary. Maybe -- maybe --
13 sometimes no action is action, sometimes it's
14 unlikely. But at the end of the day, when we hit
15 the 8 percent, then we can't start talking about
16 likelihood anymore. We've got to do something.

17 Q. All right. So then scrolling down in the
18 transcript, what -- what follows is some discussion
19 of why that -- that 8 percent figure was chosen.

20 Do you see that?

21 A. Yes.

22 Q. Okay. So skipping ahead at -- to line --
23 page 42, line 22, you then go on to say: But the
24 bottom line is we look ahead and stress the
25 portfolio and we identify a condition that is out of

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1 bounds, we'll hedge that right now.

2 And so as a result -- as you say what
3 happens if the market moves 10 percent -- whatever
4 market it is -- and if that gives us an
5 uncomfortably large loss, we'll go in and hedge that
6 thing.

7 Now that 10 percent move might never
8 occur, but if we even -- if we get even 3 percent in
9 that direction, then automatically we have that
10 additional cushioning.

11 And in that circumstance, then we'd look
12 again at the model and we'd say, oops, we still have
13 a problem. We'll hedge some more.

14 So it's a very gradual type of hedging
15 scenario. We've never really had to liquidate the
16 portfolio or to neutralize it because our ongoing
17 hedging techniques -- we use hedging instruments.
18 That's what we trade in. That's what options are
19 really built for.

20 So our hedging techniques allow us to
21 cushion price movement and we're never in a
22 situation where we have sort of a hard stop loss,
23 and we're sitting just waiting for that 8 percent to
24 get triggered and then we get out because we're
25 constantly hedging.

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1 That's the first thing we do every day is
2 to identify risks and tune up our hedges if they're
3 not sufficient.

4 And that allows us to avoid that hard stop
5 and still maintain our drawdown discipline.

6 Okay. Is that an accurate description of
7 how you stress the portfolio in OptionVue?

8 A. Yeah, I think it absolutely is. It's --
9 in fact, if we're looking ahead -- as I've described
10 all day today, we're looking ahead. We hedge if we
11 see something that is a likely risk.

12 And -- and as I said, it's not sufficient
13 in my judgment, but I think that's kind of implicit,
14 then we'll go in and do some more. I think that's
15 accurate. That describes our process.

16 Q. Okay. But in what I just read, the word,
17 likely, appear anywhere?

18 A. Again, I have to keep repeating this,
19 because you're asking about specific words, like
20 we're reading a disclosure document. This is a
21 off-the-cuff description, which I -- certainly my
22 meaning is -- was very accurate. I didn't parse
23 words. I didn't rehearse it. I didn't write it
24 out. I didn't run it through compliance.

25 If the words were confusing, there was --

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1 there was -- no one asked for further explanation.
2 But that's what I meant. I didn't mean to use
3 language that would fit in a prospectus, especially
4 when they were advised to look at it.

5 Q. Right. The -- whether you scripted it out
6 or not, I mean, the words that -- that reached the
7 listeners' ears, I mean, house calls, it was
8 important for those words to be accurate, correct?

9 A. I think they were accurate.

10 Q. I didn't ask you if they were accurate. I
11 asked you if it was important that they -- that they
12 be accurate, correct?

13 A. They accurately describe what -- what I
14 did in a general sense, and very specifically what I
15 was doing at the time of the call, because I was on
16 the call to talk about what we were today. But in
17 general, I'm -- you know, this describes, I think,
18 very consistently my process.

19 Q. All right. But focusing on the beginning
20 of 40 -- page 42, line 22, when you say, when you
21 were talking about the bottom line, it's -- we look
22 ahead, stress the portfolio, and we identify if a
23 condition is out of bounds, you'll hedge that right
24 now, okay?

25 So when you say, Identify a condition that

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1 is out of bounds, what does that mean? What are you
2 referring to?

3 A. Well, I meant at the time, what I
4 consistently described, and, you know, we only
5 looked at, you know, very, very tiny samples of
6 house calls. But in those calls where this topic
7 came up, I've identified that 8 percent open option
8 premium as the -- the number I use so that I had a
9 number, rather than just a gut feel. And then I had
10 a number to look for in scenarios that made sense,
11 given the market conditions in the portfolio
12 composition.

13 Q. And when you're talking about here, what
14 happens if the market moves to 10 percent, and that
15 gives us an uncomfortably large loss, we'll go in
16 and hedge that then. You have knowledge that that
17 10-percent move never occurred, right?

18 A. Yeah, that's -- yeah, that's what I said,
19 sure.

20 Q. And you say in here that the first
21 thing -- strike that.

22 Yeah, you say in this page you say that
23 the first thing you do every day is to identify risk
24 and option reviews.

25 Do you see that?

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1 A. Yes.

2 Q. Okay. Is that -- is that true? Is that
3 the first thing you did every day in managing the
4 Hedged Futures Fund?

5 A. Yeah. So, again, I've got to repeat. I
6 think -- so turn out on OptionVue every day. First
7 thing I look at is the portfolio. Some days market
8 conditions are quiet, nothing has changed in the
9 portfolio. It doesn't take very long to take a
10 quick glance at the risk profile to see that it
11 hasn't moved. Other times, it's volatile, so it
12 actually might be required. I'll have to model a
13 lot of different scenarios to understand what action
14 and how urgent. So the stress test occurs.
15 Sometimes it's very quick, sometimes it's more
16 lengthy. Again, depending on the portfolio
17 deposition and market conditions.

18 Q. From what you recall, the February 2017
19 time period, there was a large drawdown in the Fund,
20 correct?

21 A. Correct.

22 Q. Okay. And that -- and that sort of
23 coalesced in mid -- midway through the month; is
24 that right?

25 A. I think so, yes.

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1 Q. So in the first part of February 2017, is
2 this -- was this your process? As described here,
3 was the first thing you did every day to identify
4 risk to shoot out hedges, if they're not sufficient?

5 Did you do that in February -- early
6 February 2017?

7 A. I do remember at that point in time our
8 risk was concentrated in nearby options. That risk
9 didn't change. The market was extremely quiet. So
10 I certainly opened the Screen every day. At that
11 point in time, I had just completed a multimonth
12 series of derisking the portfolio. My choice at
13 that point was that with a short time to expiration
14 that the best risk return tradeoff was not to take
15 action.

16 Q. All right. And that -- that decision
17 proved to be a costly one, right?

18 A. In -- in hindsight, that judgment turned
19 out to be incorrect.

20 Q. The Fund held a lot of risk at that time,
21 true?

22 A. I'm not sure what you mean by risk.

23 Q. While there was -- given the concentration
24 that you described in the time the -- the positions
25 were sensitive to movement in the underlying -- the

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1 price in the underlying asset, the stock futures
2 contract, right?

3 A. What I recall based on the metrics we used
4 to operate the Fund is that most of them, if not all
5 of them, were at the very low end of their range.

6 Q. Well, I'm not -- put aside the risk
7 metrics. I'm talking about what you -- what option
8 you shared. Were you stressing a portfolio on
9 OptionVue? What did -- what did OptionVue tell you
10 about potential risk of -- to the Fund?

11 A. What I recall was in the -- the risk --
12 there was some concentration on the portfolio, and
13 there was some concentration of risk in the
14 portfolio when I did my evaluation, and it was in
15 options expiring in roughly two weeks.

16 And when I looked at the likelihood of
17 market move that would cause that 8 percent drop
18 down, it was very low. And I also knew at the time
19 that with near-to-expiration options, the risk of
20 decline fairly rapidly day by day. So these were
21 some of the judgments I made about how to manage
22 that risk. But overall, the portfolios were at
23 variable level of positions critical margin
24 requirement from the collateral from the brokers,
25 and the option premium was low.

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1 Q. Okay. Why don't we -- can you pull up
2 what has been premarked as Exhibit 9, Mr. Walczak?
3 And this is a transcript of an October 25, 2016,
4 house call.

5 A. Okay.
6 (Exhibit 9 was marked for identification.)

7 BY MR. FOSTER:

8 Q. All right. So if I could direct your
9 attention to page 30, line 6.

10 A. Yep.

11 Q. Let me just catch up with. So starting
12 line 6, a participant asks: Hi, Ed. It's my
13 understanding that as a goal you shoot for about a
14 maximum drawdown of 8 percent. Specifically what
15 happens to the Fund if that were to occur?

16 And you begin your response by saying:
17 So -- and you're correct, that is the goal of our
18 risk management process and protocols.

19 Do you see that?

20 A. I do.

21 Q. So that -- you agree that you manage the
22 Fund with a goal of -- of limiting any drawdown to
23 8 percent?

24 A. Yeah. I'm -- I'm pleased that for Jessica
25 who asked the question, I understood it was a goal,

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1 and I guaranteed it, because I'm trying to make
2 people understand there were no guarantees in this,
3 and there's all kinds of -- but he understands it's
4 a goal. And absolutely repeating that, because that
5 was our goal of what we're doing.

6 Q. Okay. And it's -- it's a goal, not a
7 guarantee. Because as you say further down at
8 line 13, We're not using a standard sort of
9 stop-loss, right?

10 A. Correct.

11 Q. Okay. Was there -- whether standard or
12 not standard, did -- was there any form of stop-loss
13 that you're aware of that you see used in managing
14 the Hedged Futures Fund?

15 A. We used a -- a concept of the stop-loss.
16 Meaning, when we hit that 8 percent, if my -- my
17 judgment in looking at scenarios and getting ahead
18 of risk turned out to be incorrect or flawed,
19 then -- and we hit an 8 percent number in that open
20 option premium, or even in a grueling 30-day
21 drawdown period, then that was our -- our trigger to
22 go in and do the best to flatten in the portfolio
23 that we could.

24 Q. What's your -- how would you define the
25 term stop-loss? What's your understanding of that

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1 term?

2 A. It's a -- it's a trigger point. I think
3 you'll find in most execution firms that allow you
4 to enter a stop-loss, there's a -- there's a pretty
5 good definition in there that says, Hey, when this
6 triggers hits, we'll enter the order, but it's a
7 market order, and there's no guarantee at what price
8 to be filled. So I think that's a pretty good --
9 pretty good term here. At least the same way, we
10 did it at a portfolio level. There was -- there was
11 no way to enter a portfolio stop-loss order in the
12 marketplace. But when we hit that level in the
13 Fund, then we would go in and treat it like a
14 stop-loss. Meaning, we'd go in and start to very
15 aggressively exit positions and do a flatten risk
16 exposure as best we could.

17 Q. But have you treated it like a stop-loss,
18 or was it, in fact, a stop-loss, or was -- you just
19 said -- as you state here there's no standard
20 stop-loss as you utilized with respect to this
21 portfolio, correct?

22 A. I'm not sure exactly what you're asking.

23 Q. Well, did you, in fact -- I mean, your
24 goal -- you made the point of -- of noting that in
25 this discussion that, look, 8 percent max drawdown

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1 is aspirational. It's a goal. Doesn't mean you're
2 going to be able to achieve it, right? And, you
3 know, you didn't -- you didn't, in fact, have any
4 way of actually limiting losses to 8 percent, did
5 you?

6 A. No. We had no way of having a guaranteed
7 limit on the -- the lawsuit portfolio.

8 Q. In February 2017, when you approached that
9 8 percent threshold, it wasn't just a little bit of
10 slippage, right? There was substantial slippage
11 from that 8 percent number, right?

12 A. Yes, there was.

13 Q. And were you able to -- were you able to
14 go in and flatten risk at that time?

15 A. We did our best, but we were unable to do
16 it.

17 Q. Is that one illustration of how you -- in
18 fact, there were no stop losses that could control
19 or limit a loss to 8 percent?

20 A. That's certainly an example. As I said,
21 that's consistent with the concept of stop-loss
22 order. And I think that's why -- that's why I used
23 the terminology.

24 Q. Okay. Did you -- did you use that
25 terminology? I mean, here, in this house call,

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1 you're actually saying we're not using a sort of
2 standard for the stop-loss. So were there times
3 when you -- when you did, in speaking with financial
4 advisors or others, used some reference to a
5 stop-loss?

6 A. I think there was a investment process
7 document that talked about stop-loss in the
8 portfolio level.

9 Q. Okay. If you can turn to what's been
10 premarked as Exhibit 10, Mr. Walczak.

11 A. All right. I've got it.
12 (Exhibit 10 was marked for identification.)

13 BY MR. FOSTER:

14 Q. Okay. So Exhibit 10 for the record is
15 Bates number CFTC3_00032463. And there's an e-mail
16 dated August 24th, 2014, from you to Chip Hano.

17 Do you see that?

18 A. Yes.

19 Q. Okay. And who is Chip Hano?

20 A. He was a -- or is maybe still, I don't
21 know -- a Catalyst wholesaler.

22 Q. Okay. Was he an internal or external
23 wholesaler? Are you familiar with the difference?

24 A. I sort of understand the difference. I
25 believe he was external. So he actually went on the

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1 call.

2 Q. Okay. And take a moment to -- to review
3 the documents. I've got a couple questions.

4 A. Okay.

5 Q. So in this exhibit, is Mr. Hano -- Hano
6 forwarding some questions from a financial advisor
7 and asking you to weigh in?

8 A. Yes.

9 Q. Okay. And he forwarded this information
10 to -- to your -- to a Harbor Financial e-mail
11 address and a Catalyst Mutual Fund e-mail address.
12 Were those both e-mail addresses that you used in
13 this time period?

14 A. Yes.

15 Q. And then Mr. Hano writes that this is from
16 Shepherd Kaplan, 14 billion AUM.

17 Do you understand the reference to
18 Shepherd Kaplan?

19 A. I -- I -- I don't actually. I don't know
20 what that is, an individual, a fund. I'm not sure.

21 Q. Okay. In your response to Mr. Hano where
22 you say, See below. And then you also say, Attached
23 are examples of typical Fund called the butterfly
24 and put calendar spread.

25 And if we scroll down to the -- this

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1 e-mail to Vann Taylor on August 13 at 1:25 p.m.

2 A. Okay. Got it.

3 Q. Okay. And it goes -- and that goes from
4 sort of the bottom of the first page -- of the
5 second page of the exhibit -- of the PDF. And then
6 there's some -- there's some language that's typed
7 in red font.

8 Do you see that?

9 A. Yes.

10 Q. Okay. Are those your comments to the
11 inquiries being made by Mr. Taylor?

12 A. I really can't tell. As I read it,
13 they're consistent with things I've described, but I
14 can't tell from this e-mail chain who is writing
15 what, to be honest.

16 Q. Do you have -- was this something you
17 would do on occasion, you know, respond to questions
18 by going down as one of the underlying e-mails
19 and -- and sort of typing over in -- and editing
20 those in red essentially?

21 A. I mean, I didn't have a lot of back and
22 forth with individual salespeople or advisors.
23 That's not my thing to do certainly, so I can't say
24 there's a typical thing. Again, I just -- I can't
25 tell from looking at this document who did the red

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1 or -- to be honest. I mean, the body -- the body up
2 top is from me talking about some graphs they must
3 have sent.

4 Q. Well, the risk management structure --
5 down in the message from Mr. Taylor where there's
6 language that says, Risk management structure.
7 Maximum loss, worst case scenarios, and the
8 structure around trading, the commentary in red that
9 follows that, do you think those are your comments?

10 A. I mean, it looks to me like it's an e-mail
11 from Vann to Chip, so whoever Vann is. I don't
12 know. That name doesn't ring a bell. So it's --
13 it's clearly his response. Where he got it, I don't
14 know.

15 Q. Well, isn't Mr. Taylor writing that, We
16 need -- we need to understand, and then it says,
17 Risk management. Maximum loss, worst case scenario,
18 and the structure around trading. And then there's
19 information provided on those topics?

20 A. Again, I have no idea, looking at this
21 document, who is writing to who. The only thing
22 that looks weird to me is that I'm attaching --
23 somebody asks me for something, I'm attaching some
24 positions structures and explaining what they are.
25 That's all I have any confidence in looking at this.

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1 Q. Okay. It says that position risks are
2 identified and hedged at entry. Portfolio risk
3 stressed daily for price excursion plus 5 percent,
4 plus 10 percent, minus 5 percent, minus 10 percent,
5 minus 20 percent, volatility excursion VIX equals
6 10, equals 20, equals 30, time horizons inclusive of
7 longest dated position expiration. Portfolio stop
8 at 8 percent drawdown. More detail needed on a
9 call.

10 Isn't that describing stress testing of
11 the nature that you did in OptionVue?

12 A. Sure. I mean, your question was did I
13 write it, I have no idea. Did I write this response
14 and someone interpreted my comments, summarized
15 them, or whatever, I don't know.

16 Q. All right. Well, regardless of who wrote
17 it, is the information accurate?

18 A. Again, this -- this marries some of the
19 questions I made and answered some question --
20 questions on the calls. But, again, I mean, I think
21 I offered up a -- as I normally did, I would have
22 had ample time -- at least the opportunity to
23 discuss it in a little more detail, because I didn't
24 feel like you could get an accurate summary in a
25 short thing like this. So I don't know if Vann was

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1 impatient and summarized my comments, as well as my
2 offer for a call whether -- if it came from us. I
3 just can't say.

4 Q. Where it says that the strategy is on
5 average 75 percent model driven and 25 percent
6 discretion -- is that accurate?

7 A. I do recall making that distinct -- I do
8 recall making that distinction when asked, you know,
9 emphasizing -- when I made the distinction, I made
10 it saying the 75 percent model driven was larger
11 than entry, and the 25 percent discretion was
12 profit-and-risk adjustment. I do recall making
13 those comments at the time.

14 Q. And you recall making those comments in
15 what -- what context?

16 A. I don't remember whether it was a house
17 call, informal question from an advisor or
18 wholesaler. I just remember that's a -- that's a
19 split that I got asked about, and it's a common
20 question for people to say, Hey, is this a
21 mechanical system? No. Is it, you know -- what
22 percentage is it mechanical versus your discretion?
23 And I typically use that split and described further
24 that, again, entries were lots and lots of options
25 analytics. Exits for both profit and risk were much

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1 more of my discretion.

2 Q. Okay. So understand that you made this
3 distinction. And so is it your testimony, also,
4 that that -- that statement is -- this -- this
5 description of the strategy, is that accurate, in
6 terms of what -- what a ratio of model driven to
7 discretion?

8 A. Yeah. And, again, it's -- it's an
9 accurate conceptualization. Is it precise, I don't
10 know how you define 75 and 25. Once again, like a
11 lot of my comments, trying to give people a general
12 sense for how the Fund was run. And so what this
13 really means is, yeah, the majority, and not 55, but
14 75, however you define that, use of model, pretty
15 great, big load of discretion involved as well.

16 Q. Okay. If you could turn to what's been
17 premarked as --

18 THE WITNESS: I apologize, but the water's
19 catching up to me a little bit here.

20 MR. FOSTER: Oh, yeah. Let's take --
21 let's take a quick break.

22 THE WITNESS: Okay.

23 MR. FOSTER: Thanks.

24 VIDEOGRAPHER: Going off the record at
25 4:25 p.m.

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1 (Recess taken.)

2 VIDEOGRAPHER: We're going back on the
3 record at 4:37 p.m.

4 BY MR. FOSTER:

5 Q. Mr. Walczak, if you could now look at
6 what's been premarked Exhibit 25.

7 A. Okay. Got it.

8 (Exhibit 25 was marked for identification.)

9 BY MR. FOSTER:

10 Q. Okay. This document, there's a
11 Bates stamp Catalyst_003_00192. There's an e-mail
12 exchange dated January 2nd, 2017. Between you and a
13 Mr. Brandon Schwulst, S-c-h-w-u-l-s-t?

14 A. Yes.

15 Q. And is -- was Brandon a external
16 wholesaler at Catalyst?

17 A. Yes, he was.

18 Q. Okay. In this -- in this e-mail chain, is
19 Mr. Schwulst forwarding on a question from a
20 financial advisor out in the field?

21 A. It looks that way, yeah.

22 Q. And Mr. Schwulst writes that this
23 individual, Mark, whom we went to the Red Rocks
24 concert with.

25 Did you go to a Red Rocks concert with

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1 Mr. Schwulst?
2 A. I did. I remember that.
3 Q. Okay. And when was that?
4 A. That I don't remember, but I remember
5 going to -- Brandon was in Denver, and I remember
6 going to a Red Rocks concert with him.
7 Q. Okay. And who else was with you and
8 Brandon?
9 A. I didn't remember who else was there, but
10 he refers to someone named Mark, and I guess he was
11 along.
12 Q. And Brandon writes that he's -- that Mark
13 was on the call Tuesday and tried to ask a question,
14 but the line wouldn't unmute. So if you could give
15 me some feedback for him, I really appreciate it.
16 And then you see the question here, which is: If
17 the S&P 500 continued to rally 2400, for example, in
18 Q1, how would that negatively impact our current
19 position and what moves we would need to make to
20 manage risk? What potential drawdowns could a move
21 like that cause?
22 Do you see that?
23 A. Yes.
24 Q. And in your response to Brandon, among
25 other things, you write that, We are in the market

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1 every day responding to movement and adjustment
2 positions.
3 Do you see that?
4 A. Yes.
5 Q. And then further on, you write, I wish I
6 could provide a rock solid max drawdown, but
7 obviously can't guarantee anything. December
8 printed roughly a 4-percent drawdown and we are
9 currently down a little over 6 percent from our
10 high water mark. Do you see that?
11 A. Yes.
12 Q. Okay. Did -- in December -- was there a
13 4-percent drawdown in December of 2016?
14 A. I think December was a down month, you
15 know, channeling month, and that sounds about right
16 to me.
17 Q. And when you write here that -- when
18 you're referring to a 4-percent drawdown in
19 December, I want to make sure I understand what --
20 what are we talking about when we're talking about
21 drawdown?
22 A. Again, I don't know the specific measure,
23 but just recollection-wise, I'm guessing that was
24 the return for the month of December.
25 Q. Okay. Well, do you, you know, have any

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1 reason to doubt you wrote the words here, December
2 printed roughly a 4-percent drawdown?
3 A. No.
4 Q. Okay. And have you made comments like
5 that in the course of managing the funds to
6 describe, you know -- referring to a drawdown in a
7 given month?
8 A. To be honest, if you'd ask me if I made
9 this comment without showing me the e-mail, I
10 wouldn't have remembered it, so I -- I don't really
11 remember.
12 Q. Well, not -- not this particular comment,
13 but just would you ever say that, Well, we have X
14 drawdown for -- in a given month?
15 A. Again, I don't -- I don't remember. Like
16 I said, if you'd ask me that question without
17 showing me this, I would tell you the same thing. I
18 don't remember talking about December. I don't know
19 if I made those comments before. I just don't
20 remember.
21 Q. Well, when you used the word drawdown, you
22 know, in managing a fund and talking with
23 wholesalers, what did you mean?
24 A. Well, it meant -- it looks to me,
25 especially from this time, I could have meant

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1 different things at different times. This context
2 sounds to me like I meant in December, we lost
3 4 percent for the month.
4 Q. So from -- from of the beginning of the
5 month to the end of the month, there was a 4 percent
6 decline in the NAV in the Fund?
7 A. Yeah, that's what I'm interpreting this to
8 be, yeah.
9 Q. Okay. And then you go on to say, We're
10 currently down a little over 6 percent from our high
11 water mark. Do you see that?
12 A. Yes.
13 Q. Okay. We were talking about high water
14 mark a little bit earlier. And that refers to what?
15 A. Well, it refers to the highest value of
16 the Fund's ever achieved.
17 Q. Okay. And you don't recall what the
18 Fund's high water mark was?
19 A. No.
20 Q. Earlier you told me that you didn't really
21 focus on where the Fund stood with respect to its
22 high water mark, but agree in this -- in this e-mail
23 you're given that data point?
24 A. Yes.
25 Q. Was -- the 8 percent, was there a

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1 significance to an 8 percent measurement from the
 2 high water mark? Did you manage the Fund to avoid
 3 an 8-percent drawdown from the funds or
 4 greater-than-8-percent drawdown from the Fund's high
 5 water mark?
 6 MR. KOPECKY: Asked and answered.
 7 A. I have answered that before. No, I didn't
 8 manage an 8-percent drawdown from a high water mark.
 9 BY MR. FOSTER:
 10 Q. Okay. Let me go to an exhibit, which has
 11 been premarked as Exhibit 11. And Exhibit 11 refers
 12 to Bates labeled number SEC300032436. And this is
 13 an e-mail chain, and e-mail on the top is from you,
 14 Mr. Walczak, dated August 26, 2014, to
 15 Mr. Jerry Szilagyi and an individual named
 16 Erina Ford.
 17 Do you see that?
 18 A. Yes.
 19 (Exhibit 11 was marked for identification.)
 20 BY MR. FOSTER:
 21 Q. And you write, See my comments below.
 22 That's your message, right?
 23 A. Yes.
 24 Q. Okay. And are your comments below the
 25 ones in the red font?

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1 A. I think probably so. Again, I don't
 2 remember. So -- but that looks like what it is.
 3 Q. Okay. And Erina Ford has an e-mail
 4 address at raymondjames.com.
 5 Do you see that?
 6 A. Yes.
 7 Q. Okay. Do you -- do you know Ms. Ford?
 8 A. Don't recall the name, no.
 9 Q. And was -- in her e-mail to Mr. Szilagyi,
 10 among other things, she writes that, I would like to
 11 understand the strategy better so we can maybe
 12 revisit our decision on whether or not we want to
 13 offer the Fund in our platform.
 14 Do you see that?
 15 A. Yes.
 16 Q. Okay. Was the Hedged Futures Fund at some
 17 point offered on the Erina James platform?
 18 A. I have no idea.
 19 Q. Were you, you know -- during the time you
 20 were managing the Fund, were you familiar with what
 21 platforms it was offered on?
 22 A. No.
 23 Q. She says that -- she writes, again to
 24 Mr. Szilagyi on her call with Ed, He mentioned an
 25 8-percent max drawdown limit that is carefully

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1 monitored. Can you provide more details on the
 2 nature of this risk mitigating tool and illustrate
 3 how perform various marketing environments.
 4 Do you see that question?
 5 A. Yes.
 6 Q. Okay. And then you believe that you
 7 provided the response in the red font, correct?
 8 A. Yeah, I think I -- I -- I probably sent
 9 that -- it looks like I sent it straight to her,
 10 which is unusual, but that's what the e-mail looks
 11 like.
 12 Q. Okay. And why do you say that would be
 13 unusual?
 14 A. Well, typically, I -- you know, if there's
 15 a question like that, I'd send it. You can see it
 16 came in to Jerry. I would typically send it out
 17 through Catalyst so they could pass judgment on
 18 whether or not it was the right language and the
 19 right thing to be saying.
 20 Q. Okay. So then the response here in red is
 21 that individual position risks are identified. Then
 22 in a parenthetical, it says, time price volatility,
 23 closed paren. And hedged with counter balancing
 24 options at entry. Individual positions are
 25 aggregated to an options pricing tool that models

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1 portfolio value stress by plus 5 percent, plus
 2 10 percent, minus 5 percent, minus 10 percent, minus
 3 20 percent, price excursion, VIX plus 10, comma plus
 4 20, across five times horizons extending to the
 5 portfolio's longest dated options expiration. And
 6 there -- stop there for a moment. You're
 7 describing -- the option pricing tool you're
 8 describing is OptionVue, correct?
 9 A. Yes.
 10 Q. And then you go on to say, Absolute
 11 drawdown of 8 percent from high water mark requires
 12 flattening of risk, no discretion allowed.
 13 Do you see that?
 14 A. Yes.
 15 Q. Okay. But a few moments ago, you told me
 16 that you did not manage the Fund to an 8-percent
 17 drawdown from a high water mark. So what did you --
 18 why did you write this?
 19 MR. KOPECKY: Objection. Form. And
 20 argumentative.
 21 A. Well, because I managed to -- the open
 22 option premium number, which, in my experience,
 23 translated to limiting drawdowns.
 24 BY MR. FOSTER:
 25 Q. Was there a -- a risk control or metric

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1 that was an absolute drawdown of 8 percent from high
2 water mark requires flattening of risk, no
3 discretion allowed?

4 A. Catalyst and I modified that metric, as I
5 mentioned to a 30-day rolling 8 percent decline,
6 NAV, which we used them in conjunction with the
7 8 percent open option premium. I modeled to the
8 8 percent open option premium. One of the metrics
9 we began to monitor was an 8 percent rolling 30-day
10 drawdown. And by the way, the reason for that was a
11 discussion in Catalyst, and they determined if you
12 flatten the Fund, what do you do next? It becomes a
13 fixed income fund. So you're going to, at some
14 point, be back on the market. So an 8-percent
15 drawdown over a relatively short period of time. We
16 would necessitate some aggressive action. But from
17 a high water mark, it's probably not a good way to
18 measure in the real world what you actually do, so
19 that was the discussion we had in Catalyst.

20 Q. Okay. And when did that modification
21 occur? Did it change from an 8-percent drawdown
22 from a high water mark to something else?

23 A. Well, I don't know. Even at this time,
24 this was -- this was something that wasn't in a
25 formal -- I think it was the formal risk measurement

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1 at that time. But that -- that was our best
2 memorialization of some of the metrics. That was
3 just that risk metrics that we used.

4 Q. Okay. You don't -- you don't recall when
5 that occurred, though, is that what you're saying?

6 A. Right.

7 Q. Do you recall what year? Do you recall
8 what specific date or month?

9 A. No, that was -- I mean, that was an
10 evolution of the metrics over time. And so a number
11 of them were modified. I mean, this continued from
12 2013 until I left Catalyst. There was quite a
13 number of modifications in the risk metrics. So
14 it's just not clear in my mind exactly when
15 different things happened.

16 Q. When this -- when this modification
17 occurred, whenever it occurred, what -- what kind of
18 document reflected this rolling one month or rolling
19 30-day measurement?

20 A. Well, as I said, that -- that drawdown
21 metric was in the -- the daily risk metric reports,
22 which -- yeah, I don't remember the exact time frame
23 of the evolution, maybe 2016 is when we had a
24 preformal reporting of those metrics, maybe earlier,
25 but I don't recall.

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1 Q. Okay. We saw the prior exhibit, right,
2 you were -- in speaking with Mr. Schwulst, it's now
3 January 2017 time period with Exhibit 25. And you
4 were still talking in terms of -- or conveying where
5 the Fund was from the high water mark, correct?

6 A. Yeah. I think I responded to a specific
7 question from him about performance. And so I went
8 back and looked it up, but that was in the regular
9 reporting tool that we used.

10 Q. So when the -- so when there is this
11 modification that you're referencing, it's the
12 daily -- the daily risk report or risk metrics that
13 recorded this information mentioned. You know, they
14 mentioned 80 -- 8 percent in 30 days. Would that --
15 would that tell you when -- if the change had
16 already happened?

17 A. Yeah. I mean, if -- whenever we could
18 find a risk report that started to talk about
19 8 percent in 30 days is a good indication of when we
20 formally agreed to make that move. We may have
21 formally done it earlier. I just don't recall
22 completely.

23 Q. Okay. If you could turn, Mr. Walczak, to
24 what's been premarked -- let me make sure I have the
25 right document. 28, Exhibit 28.

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1 A. Okay. I've got it.
2 (Exhibit 28 was marked for identification.)
3 BY MR. FOSTER:

4 Q. Looking at the first page of this document
5 there is, among other Bates number, a Bates number
6 SEC_01_0023787. Do you recognize this document?

7 A. Yes, it's -- there were a number of
8 versions of this one, but I recognize, generally,
9 this document.

10 Q. Okay. And the -- the -- there's actually
11 two e-mails in this chain, so to be clear the top
12 e-mail is actually from Mr. Szilagyi, dated
13 February 14th, 2017, to various folks, and you were
14 not copied on that -- that e-mail. And he's
15 forwarding an e-mail from you a few hours earlier on
16 February 14th, 2017. So you're -- focused on your
17 e-mail, it's from you to Mr. Schoonover, with a CC
18 to Mr. Rios and Mr. Szilagyi with the subject,
19 HFS Update.

20 Do you see that?

21 A. Yes.

22 Q. Okay. And HFFS -- HFS refers to the
23 Hedged Futures Fund?

24 A. Yes.

25 Q. Okay. And you -- the only words in your

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1 message are, Feel free to edit. And then there's an
 2 attachment.
 3 Do you see that?
 4 A. Yes.
 5 Q. So the attachment is a document entitled,
 6 Catalyst Hedge Futures Strategy Fund Update:
 7 February 14, 2017.
 8 MR. KOPECKY: Sorry, guys, to interrupt,
 9 but Ed's e-mail doesn't say there's an attachment.
 10 I see that Jerry's does. Ed's does not.
 11 MR. FOSTER: Okay.
 12 MR. KOPECKY: So I just -- I don't know
 13 why that is or what happened. But I'm not agreeing
 14 then that Ed had -- had an attachment or this
 15 attachment unless or until we figure out what's
 16 going on. That's all.
 17 Ask your questions, Mike. But that's odd
 18 to me that there's not -- it doesn't say attachment
 19 in Ed's e-mail.
 20 MR. FOSTER: Okay. So why don't we start
 21 for the false start. Why don't we go to what's been
 22 premarked as Exhibit 29, which should I think should
 23 address your concern, Mr. Kopecky. This is the
 24 e-mail without the forward from Mr. Szilagyi.
 25 MR. KOPECKY: Okay. I see in that one so

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1 this is him sending this attachment to Schoonover,
 2 Kim, and Jerry. All right.
 3 (Exhibit 29 was marked for identification.)
 4 BY MR. FOSTER:
 5 Q. Okay. So do you have Exhibit 29 in front
 6 of you, Mr. Walczak?
 7 A. 29, I do.
 8 Q. All right. You do. Okay. Sorry. We're
 9 just shifting gears here real quick.
 10 And this document has a Bates stamp of
 11 SEC010000276. This is your e-mail to
 12 Mr. Schoonover, Ms. Rios, Mr. Szilagyi, at 3:09 a.m.
 13 on February 14, 2017. Is this what your -- you
 14 recognize in the prior exhibit, this e-mail?
 15 A. Yeah. The only comment I'll make is I
 16 remember this, because it was -- I was asked to
 17 write a -- excuse me -- an update subsequent to the
 18 large drawdown we had in February. And I -- I
 19 recall, because it was fairly considerable. There
 20 was a -- the edits done -- you know, it was my habit
 21 to send this stuff to Catalyst and let them decide
 22 what they actually wanted to say. And they did a
 23 pretty decent edit to this one, so I don't know
 24 which version this is.
 25 Q. All right. Well, isn't this a version

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1 that you're sending to them and inviting them to
 2 edit?
 3 A. Well, I'm not 100 percent sure. I just
 4 remember very specifically that there were two
 5 versions to this, and they were more materially
 6 different than normal for Catalyst to edit something
 7 I sent to them.
 8 Q. Okay. Do you -- do you have any reason to
 9 believe you didn't -- you didn't write the document
 10 that's attached to this e-mail that you're asking or
 11 telling folks they can feel free to edit?
 12 A. Well, like I said, I -- maybe I missed the
 13 confirmation in number 29. If that's proof that it
 14 came from me, well, it came from me. But, like I
 15 said, I very specifically, because of the time frame
 16 and the activity around the drawdown, remember the
 17 communications effort Catalyst had begun to do some
 18 pretty material editing to things in this document
 19 in particular. So that's all I would say.
 20 Q. Sure. Sure. Sure. If we look at -- back
 21 to Exhibit 28, and Mr. Szilagyi is forwarding your
 22 e-mail to various folks. And he writes, Let's
 23 review and make sure we are comfortable with this
 24 before we release to the team.
 25 Do you see that?

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1 A. Yes. So, again, it wouldn't be unusual
 2 for -- for me to forward a document, for Jerry to
 3 have somebody to look at it, edit it, and then Jerry
 4 send it out to others, and say, Okay, here's what we
 5 think our final version is. What do you think?
 6 So -- so, you know, again, it sounds, though, that
 7 may be the case here. I'm not sure.
 8 Q. What -- what makes you -- what is this --
 9 what about this suggests to you that in Exhibit 29,
 10 this is not your document that you wrote? What did
 11 he ask you in any way, shape, or form that -- that
 12 somehow this has already been edited by somebody
 13 else?
 14 A. I'm not suggesting it has. I just
 15 remember that this document sticks in my memory.
 16 The edit sticks in my memory, and I can't tell which
 17 version this is. That's all.
 18 Q. Okay. And in this -- in this update, you
 19 provide an explanation for the drawdown that
 20 occurred in February 2017 at least up to this point;
 21 is that right?
 22 A. All right. Let me take a moment to read
 23 it.
 24 Q. Sure.
 25 A. Okay.

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1 Q. Okay. So back to my question. Is that
2 what you're doing here, you're -- you're explaining
3 why the drawdown occurred, in your words?
4 A. Yeah, that was the first pass quick
5 assessment, yes.
6 MR. KOPECKY: Note my objection that that
7 misstates exactly what you said here in the document
8 itself. So it misstates the document,
9 mischaracterizes it, objection to form and
10 foundation.
11 BY MR. FOSTER:
12 Q. Do you see that -- so after the first --
13 one, two, three -- the first four paragraphs talking
14 about the NAV volatility and the conditions
15 surrounding that volatility. Do you see that? Is
16 that fair?
17 A. Which paragraph should I be looking at?
18 Q. Just the -- before the -- the paragraph
19 that precedes, What have we done.
20 A. The two paragraphs that you want me to
21 look at, or just the one right above, What we have
22 done?
23 Q. Well, why don't you tell me what --
24 what -- what are you saying in the first several
25 paragraphs of this document?

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1 A. Like I said, I wanted to give -- at the
2 request, I wanted to give Catalyst a quick strike
3 kind of assessment. I didn't have a chance to do a
4 lot of the analysis. Some of the factors, they were
5 interested in some communication, so I wrote
6 something relatively quickly to describe what I felt
7 was responsible for the, you know, internal for the
8 Fund, what was responsible for the drawdown and
9 volatility.
10 Q. So under the subheading, What have we
11 done, the second bullet point, first sentence: We
12 activated an additional risk metric that we have
13 been testing in response to the onset of heightened
14 Fund volatility. This metric will force earlier and
15 more aggressive and adjustment actions to help avoid
16 the impact of expiration related volatility.
17 Do you see that?
18 A. Yes.
19 Q. Okay. So was that true? Was there an
20 additional risk metric that was activated on or
21 about this time mid-February 2017?
22 A. I don't recall whether we formally did or
23 did not right at that moment. I don't remember.
24 Q. Well, the document says you did, right?
25 It says, We activated an additional risk metric --

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1 A. Well, that's why I said Catalyst. You
2 know, that was probably our intention, what we
3 formally did or not. I expected them to either say,
4 Okay, we're not going to do it and let's take this
5 out, or we're gonna do it. But at some point, you
6 know, there must be a reason for me to write it, but
7 I don't remember did we do it right that day.
8 Again, that's why I sent it back to Catalyst, not to
9 external parts.
10 Q. Whether you did it on this day, the next
11 day, a week later, do you know -- or not at all, do
12 you -- do you know what additional risk metric is
13 being referred to?
14 A. I -- my best guess, we did talk about a
15 number of metrics. My best guess would be delta,
16 but that's only a guess. Eventually we did delta.
17 This might have been a concentration metric that we
18 tested and later discarded. We were testing delta
19 at the time. We eventually included delta, but we
20 also had a number of meetings down into March
21 before, I think, we formally adopted delta. But,
22 again, I don't -- I don't recall.
23 Q. Well, if we scroll down further,
24 Mr. Walczak, in the document under the heading, What
25 this means going forward, the first bullet point

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1 reads: The strategy is intact. As we do following
2 any drawdown, we have made changes to try to improve
3 risk management while maintaining the return profile
4 the strategy has delivered in the past.
5 Do you see that?
6 A. Yes.
7 Q. Okay. As of -- as of the date of this
8 e-mail, were there -- have changes been made to the
9 risk management of the Fund, given -- given the
10 drawdown that had occurred?
11 A. Again, these were joint decisions for
12 Catalyst, so we must have been in mid discussion.
13 So I wrote it as though changes were made and sent
14 it to Catalyst so that if we wanted to announce it,
15 if they wanted to announce it, if we decided to put
16 it on a daily risk metric, we had those discussions.
17 We've been in discussions regarding changes as early
18 as December.
19 So, again, if -- this was a -- this was a
20 draft communication sent to Catalyst so that they
21 could identify what did they want to publicize, what
22 was actually in place, what we were going to do next
23 month. So what actually happened, I don't have a
24 clear recollection of that.
25 Q. Okay. Well, I mean, as of the time you

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1 sat down and wrote this, if there had been, you
2 know, changes made to try to improve risk
3 management, you would have been aware of that,
4 right, as the portfolio manager?

5 A. I would have. I'm just telling you I
6 don't recall if at this very moment, like I said,
7 whether we had already made the changes. I wrote
8 this expecting that there would be changes. I don't
9 know of the timing. I don't remember which ones. I
10 do remember that we -- you know, internally
11 discussed a number of metrics, including delta,
12 which is the one that finally was instituted. But,
13 again, I also remember further discussions in March
14 around delta, and so I don't recall exactly when
15 that became a formal part of that risk disclosure.

16 Q. Of the risk disclosure, the word you just
17 used, I'm trying to understand just your risk
18 management. So putting aside the question --
19 putting aside the question of whether at this
20 particular moment in time there had been changes
21 made to improve risk management, whether it was on
22 this date or in the week, two weeks, or a month
23 after, were there -- were there -- in the wake of
24 the February 2017 drawdown, were there changes made
25 to how you managed the risk of the Fund?

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1 A. Yeah. Again, beginning of December, this
2 was a very collaborative effort, even more so than
3 in the past. Remember, Catalyst is the advisor of
4 the Fund. I'm portfolio manager. And beginning
5 December, it was a very collaborative effort,
6 particularly in the subject of risk management. And
7 certainly there were changes made at some point in
8 the February, March, maybe down into April time
9 frame. But as we sit here today, I can't tell you
10 specific dates. I know that ultimately what
11 survived was a delta-based risk measure. But when
12 it was formalized, I can't tell you today when that
13 was.

14 Q. And what was that delta-based risk metric?

15 A. It was simply monitoring the delta
16 exposure of the Fund.

17 Q. So the metric was simply just a monitor?
18 Was there a threshold or some sort of cap on -- on
19 delta?

20 A. Yes, I guess that's what I mean. We start
21 to measure and set a limit on delta exposure.

22 Q. Okay. And what -- was there a limit set
23 on delta exposure?

24 A. I recall that there was. Like I said, I
25 don't recall when or what it was specifically at

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1 that time, because it changed.

2 Q. And did that -- was that delta measure --
3 the delta metric -- that delta exposure limit, did
4 it, in fact, improve the risk management of the
5 Fund?

6 A. I don't know exactly how to answer that.
7 One of the -- I mean, how do you measure whether the
8 risk management of the Fund was approved?

9 Q. I don't think. You're the portfolio
10 manager of a \$4 billion mutual fund. So I'm just a
11 lawyer. You tell me. How -- how do you measure
12 that?

13 A. I just want to understand what question
14 you're asking.

15 MR. KOPECKY: Objection. Argumentative.
16 Don't even bother answering that.

17 BY MR. FOSTER:

18 Q. Well, the intent -- as I'm running through
19 the document, I'm not trying to create some
20 controversy. But the document says the intent of
21 the changes are to improve risk management. I'm
22 asking you -- I asked you what changes were made.
23 You don't recall exactly when they were made, but
24 one change to identify was the delta risk metric.
25 And so, you know, the intent was to improve risk

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1 management. And I'm just asking if it worked. Did
2 it improve the risk management in some way, shape,
3 or form?

4 MR. KOPECKY: Asked and answered.

5 Go ahead, Ed.

6 A. Again, I don't know what -- what is
7 meaningful to you in terms of proving risk
8 management. What do you mean by is it better or
9 not?

10 BY MR. FOSTER:

11 Q. No. No. I'm not asking a different
12 question. I mean, the words you wrote on this page
13 were improved risk management. So I'm just using
14 the word that you wrote down on this piece of paper.

15 So, you know, were there changes that
16 post-February 2017 that were made that improved risk
17 management of the Fund? That's just my question.

18 A. All I can tell you is there were changes
19 that were made. I never received a -- any metric to
20 understand what Catalyst was using to measure
21 whether risk management was approved or not. So I
22 don't know how to answer that question.

23 Q. You didn't have a view? You didn't have a
24 view in the time frame of -- or at any point, did
25 you have a -- hold a view as to whether a delta risk

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1 metric was useful in managing risk of the
 2 Hedged Futures Fund?
 3 A. I had a point of view that it could be
 4 useful, but it was highly dependent on where the
 5 level was set.
 6 Q. And it sounds like where the level was set
 7 at a -- at a given threshold. Or did you agree with
 8 wherever it ended up being set?
 9 A. We -- as I mentioned, I recall having a
 10 pretty lengthy meeting in March to talk about
 11 levels. We agreed to experiment with the particular
 12 level. We used a delta gamma combination, delta
 13 gamma 70. We -- we tried to find that level
 14 collectively for some period of time. I'm not sure
 15 we ever completely achieved a comfortable and
 16 consistent level going forward.
 17 Q. If we go down to the next bullet,
 18 Mr. Walczak, this bullet reads: The Fund is intact.
 19 We have experienced the market conditions that are
 20 normally unfavorable for us, i.e. a rapid upside
 21 move in extremely low volatility conditions. The
 22 impact on the Fund was even more severe due to a
 23 perfect storm of conditions, some of which were our
 24 own doing. We think we have those fixed. Do you
 25 see that, those statements from the second bullet

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1 point?
 2 A. Yes. Yes.
 3 Q. So the market conditions that are
 4 described, rapid upside move in an extremely low
 5 volatility conditions. Prior to February 2017, you
 6 understood that those market conditions were --
 7 would be unfavorable to the Fund, correct?
 8 A. Those are the type of conditions that
 9 could be unfavorable, but, again, there's no --
 10 mandate that they're unfavorable. They tend over
 11 time to be less favorable than different conditions,
 12 yes.
 13 Q. Okay. Had the Fund experienced those
 14 conditions in the past?
 15 A. Most recent, I think, experience and
 16 somewhere along the way, I mentioned it, maybe in a
 17 call or something, was 2013 maybe.
 18 Q. And what happened in May 2013?
 19 A. In May of 2013?
 20 Q. I'm sorry. What month did you say? I
 21 might have misheard.
 22 A. I just said the year 2013 was a -- the
 23 more recent example that I can recall the Fund was
 24 operating above a low volatility rapid -- rapidly
 25 rising market, just that year.

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1 Q. Okay. And what was the -- did the Fund
 2 have a positive or negative return that year?
 3 A. Overall, I believe it had a negative
 4 return in 2013.
 5 Q. And what about any other time that you
 6 recall? Was there a time in 2014 when there was an
 7 upside move in a low vol environment?
 8 A. I don't recall specifics, other than I
 9 certainly know that 2013 I cited, because it was
 10 kind of a year-long scenario. But the time horizon
 11 for the Fund strategy was basically 60, 90,
 12 120 days, so you could have a normal volatility year
 13 with a two, three, four-month low vol increase that
 14 would cause you some difficulty during that time.
 15 So there were certainly other periods, but I don't
 16 recall specifics.
 17 Q. In the next -- so focus on the next
 18 sentence where you write, The impact on the Fund was
 19 even more severe to a perfect -- due to a perfect
 20 storm of conditions.
 21 What conditions are you referring to
 22 there?
 23 A. You know, again, this is a first path, and
 24 I don't remember as I wrote this. In fact, I do --
 25 I do remember now the edit did not include some of

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1 this language, the final version of this. But my
 2 initial assessment was we had -- we had a
 3 circumstance where very low volatility and relative
 4 to that volatility an extremely statistically rare
 5 upside move combined with what we now know to be a
 6 gamma squeeze, which was not a concept -- not
 7 familiar to anyone back in the day, but it's dealing
 8 positioning. And that exacerbated and worsened
 9 dramatically our -- the ease of exiting positions in
 10 particular prices we had to pay, and that was an
 11 example of highly extreme slippage to our exit.
 12 Q. Okay. Bear with me. I'm going to break
 13 that down a second.
 14 So what was statistically rare?
 15 A. The price excursion relative to the
 16 existing level of volatility.
 17 Q. And how did you reach that conclusion that
 18 it was statistically rare?
 19 A. Basically, as I described earlier today,
 20 when I did my stress test, I would look at it
 21 prevailing, realize volatility in the underlying,
 22 and determine what sort of price movement I should
 23 look at in my scenario -- scenario analysis.
 24 Again, the analogy or the examples I cited
 25 was in March of 2020, you look at a really big move.

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1 And in February of 2017, which had, I think, the
2 absolute historically lowest volatility of all time
3 or very close. The difference in those conditions,
4 you run your stats on what's the likely move? What
5 is your standard deviation of expected price?
6 What's the range? And by those metrics, it was a
7 highly rare pricing.

8 Q. Highly rare, like, is there -- can you
9 quantify that in any way?

10 A. I can, but I don't have those numbers in
11 front of me right now. It can be done, but I don't
12 recall.

13 Q. Okay. Did you -- did you run those
14 numbers previously?

15 A. I have.

16 Q. Okay. And did you record that analysis?

17 A. No.

18 Q. So when you said you ran them -- you ran
19 them previously, it was in your head?

20 A. No. I looked them up. I did a
21 calculation, and I then stated.

22 Q. Okay. And then the gamma squeeze. What
23 are you talking about there?

24 A. So in the -- in most options trading, and
25 especially what we do in options of the future is to

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1 gamma squeeze, if you liquidate rampantly, you're
2 likely to push prices higher.

3 Q. Okay. Was the concentration of the
4 portfolio in February third week options, was that
5 one of the conditions that was of your own doing?

6 A. I mean, I -- maybe, again, I don't
7 remember from writing this, if that's something that
8 I was -- that fell into this category.

9 Q. The -- if you go back up in the document,
10 that one, two, three, fourth paragraph, which
11 states: The recent week has been particular --
12 particularly volatile. February options expirations
13 contained the Fund's largest concentration of
14 positions both based on conditions months ago when
15 they were entered and based on the repositioning of
16 options from prior several expirations. So there
17 was -- there was a concentration -- or are you
18 saying that the concentration of the Fund in these
19 particular February options, did that exasperate the
20 drawdown?

21 A. Yeah. I mean, what I'm describing here is
22 basically that in the normal operation of the Fund,
23 in particular, the derisking of the Fund, because we
24 weren't entering new positions, the largest
25 concentration was in February. It wasn't a

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1 counter party is typically dealer or market vendor.
2 And unfortunately, understanding this fully, you've
3 got to get into it as we started to rapidly
4 liquidate. And, again, that was -- we can earn our
5 8 percent trigger. We hit the button to liquidate
6 positions, and that liquidation forced our common
7 parties to -- well, a couple things. Profit motive,
8 they jacked the prices up on options table.

9 But their normal way of doing business is
10 to hedge their risk, so when they sell an option,
11 they buy a futures contract against the risks and
12 just take it on by someone the options wants to buy,
13 which drives the market up, which in turn increases
14 the pricing option we're trying to buy, and you get
15 into a negative feedback. But, again, at the time
16 of writing this document, there was no time to have
17 done that kind of assessment subsequent to the
18 drawdown. That's -- that's my conclusion.

19 Q. Okay. The reference here to perfect storm
20 of conditions, some of which were our own doing.
21 Which -- which -- which conditions that comprise
22 that perfect storm were your own doing?

23 A. I don't recall exactly what you're
24 referring to, but likely, as I described it to you,
25 just the fact of us even independent of any kind of

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1 particularly large concentration relative to the
2 Fund's history. It's just that there weren't a
3 corresponding sort of counterbalance further,
4 because we had elected not to put on new positions
5 until we derisked the Fund further, and we were in
6 the process of doing that. So we ended up at this
7 moment in time with, relative to the overall fund, a
8 higher than normal concentration in February. But
9 not because we went out and put on positions, but
10 it's just we didn't put them elsewhere, because we
11 didn't want additional positions of fund at that
12 time.

13 Q. When was the decision made not to put on
14 additional positions in the Fund?

15 A. I decided to do that as a part of my --
16 again, in my stress testing back in November of
17 2016. Was validated when Catalyst became heavily
18 involved in -- in fund management, risk management
19 in December. So the last new position, my
20 recollection, is it was put on sometime in November.
21 Again, in November the typical thing would be
22 putting on February positions, so that's how we
23 ended up with a little higher concentration than
24 normal in February.

25 Q. Okay. Bear with me one second.

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1 All right. If you could go to what's been
2 premarked -- let me find it here -- Exhibit 34. So
3 there's another transcript of an open house call on
4 February 27, 2017. Do you have that document in
5 front of you?

6 A. Yes.
7 (Exhibit 34 was marked for identification.)

8 BY MR. FOSTER:

9 Q. So this is now towards the end of the
10 month, and how did -- how did the Fund end up for
11 the month of February?

12 A. I don't know.

13 Q. Well, do you recall what -- where it stood
14 in relation to the eight-day percent rolling 30-day
15 number that you mentioned?

16 A. No, again, I don't have the performance
17 numbers in front of me, so I don't know.

18 Q. Well, you can recall that the Fund had a
19 big drawn down in February, though, right?

20 A. Yes.

21 Q. All right. Well, I think we've discussed
22 that with you before. We don't need to rehash it.
23 If you could go to page 45.

24 A. Okay.

25 Q. Okay. And so there's -- there's a

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1 participant on the call, and you're having a
2 back-and-forth with that participant. Do you see
3 that on page 45?

4 A. Yes.

5 Q. Okay. And the -- and so the participants
6 are referencing a number of years in the trading,
7 and then it goes on to say, line 12: So -- and I
8 guess maybe I didn't -- the question didn't
9 really -- the question didn't come out really well.

10 And you have seen all different types of markets as
11 they pertain to options, and how options trade, and
12 how options decay, and, so forth?

13 Wasn't there at some point prior to
14 getting closer to -- as they got -- inched closer to
15 options expiration that you kind of said to
16 yourself -- you knew what was going to happen as
17 they -- as we were at -- somewhere in the month that
18 you kind of had a sneaking suspicion of what was
19 going to happen to the fund.

20 And response starting at line 23, you
21 state: Well, no, and I can tell you, had I had that
22 suspicion, I would have behaved very differently.
23 All I can do is, as you said, trading options for a
24 long period of time, as we come into an expiration
25 period, we generally establish kind of lines in the

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1 sand.

2 All our analytical suites suggested that
3 the market was already significantly overextended.
4 We drew a line in the sand and said that all of this
5 is false if we break through this line. We broke
6 through that -- through the line. We took positions
7 off. The sensitivity of the options and the
8 dramatic nature of the move led to a larger drawdown
9 than it had in the past.

10 Do you see that?

11 A. Yes.

12 Q. When you referenced analytical suites,
13 what are you referring to?

14 A. Things we've looked at in terms of --
15 again, I've talked about standard deviation moves.
16 So we look at where the market has been, where it
17 might go, what's the current level of volatility.
18 We looked at deviations from moving averages, you
19 know, the mean version stuff we talked about today.
20 So as far as I can recall, that's the sort of thing
21 that I was referencing.

22 Q. So, again, you go on and starting at
23 line 11 on the same page, 46: So, again, for me it
24 was a perfect storm. We've had drawdowns under
25 similar conditions in the past. This one was

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1 significantly worse. It looks like the drawdown
2 that I had in the fund back in '07, which was for
3 different reasons.

4 And, unfortunately, you go through -- you
5 go through these drawdowns and you say, what failed
6 in the way that we were managing risks and running
7 the fund, and then you try to come out the other
8 side having corrected those failures. And that's
9 essentially what we're doing now.

10 Assuming -- let me stop there for a
11 second. What -- what were the failures that you
12 identified, if any? What failed in the way that you
13 were managing risks and running the Fund and that
14 you tried to correct?

15 A. At that time I don't actually, you know, I
16 don't recall what I was referring to in this
17 particular call. It's too long ago.

18 Q. Well, do you recall what -- what failed,
19 if anything, in the way that you were managing risks
20 at that time?

21 A. So, again, my comment is simply to -- to
22 answer the question and to talk about what we
23 typically do in a drawdown situation, that is go
24 through an analysis, identify where there might be
25 failures, what can we do better on the other side.

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1 So I don't know if we had identified, at this
2 juncture, specifics, you know, maybe, maybe not.
3 But this is really a description of a process that
4 says, Okay. Why don't we get a bigger drawdown than
5 we'd like.

6 Why can't we do a -- I don't know if there
7 were any hard-and-fast conclusions at that point
8 that drove my comments.

9 Q. Going over to page 48, on or about the
10 line 13, you say: So, clearly, we didn't have
11 something in place; the risks went too far.

12 What didn't you have in place at the time
13 that would have helped you manage the risk that
14 presented themselves?

15 A. Again, I think this comment actually
16 illustrates what I was talking about. The something
17 is TBD, we're saying clearly the result isn't what
18 we wanted, so there must have been something that
19 must be built, but we're not sure what it is yet.
20 But we're --

21 Q. Okay. Did -- did you -- did you determine
22 what it was? You went through this in the past
23 what -- what did -- what in place -- should have
24 been in place at the time?

25 A. We did ultimately --

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1 MR. KOPECKY: Objection. Note my
2 objection there. And objection to the form and
3 foundation what would have been in place.

4 But go ahead, Ed.

5 A. Yeah. We identified later that it's -- if
6 we -- you know, if we put in a delta metric, we
7 might have avoided some of the drawdown. At the
8 same time, part of our conclusion was that this was
9 a -- you know, a once in -- you know, this was a
10 once in really 20 year type of event. So you want
11 to be careful about managing a strategy to a
12 one-in-20-year event. So the question became if you
13 put in a delta, does the strategy actually make any
14 money anymore? But that's the one feature that we
15 did put in place, as I said, at some point down the
16 road.

17 Q. Well, if you -- if you scroll down on this
18 same page, right, page 48, line 24, you say: But
19 we've put metrics in place that would have prevented
20 this particular occurrence.

21 A. Yes.

22 Q. So as of the date -- the date of this
23 house call, what metrics were put in place, then?
24 You're saying it would have prevented this
25 particular drawdown.

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1 A. I -- I honestly don't remember which ones
2 that's referred to.

3 Q. All right. Well, putting aside what you
4 remember, what you're referring to in this document,
5 were there metrics that were subsequently put in
6 place that would have, quote/unquote, prevented this
7 particular occurrence?

8 A. We did put a delta metric in, but, again,
9 we, at least in my tenure with the Fund, never went
10 through any environment that's even close to that
11 February period. So the answer is still uncertain.
12 But we did add a delta metric in hopes that it would
13 have prevented this.

14 Q. Okay. So you don't know what you're
15 referring to here in this -- this house call
16 transcript when you talk about metrics that have
17 been put in place?

18 A. Yeah. I don't remember which ones I've
19 been referring to.

20 Q. Okay. Let me -- let me cover one more
21 document with you, Mr. Walczak, and then I'll let
22 you go. Give me one more moment to pull it up,
23 please.

24 Well, before we do that, we were talking
25 about a delta risk metric being put in place. But,

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1 again, OptionVue incorporated delta -- the delta --
2 delta risk information, correct?

3 A. OptionVue allowed me to see individual
4 options, summary, option Greeks, delta, theta, beta
5 primarily.

6 Q. Okay. And in the -- in the month of
7 February, leading up to, you know, from the
8 beginning -- pretty much all throughout the month of
9 February, you were -- were you receiving reports
10 from Catalyst in New York that contained delta
11 information?

12 A. Yeah. We had decided in January to begin
13 to test delta and see whether it was relevant to the
14 behavior of the portfolio. So the early returns in
15 February were not encouraging. It looked -- the
16 math got the direction problems. And I later did a
17 study that suggests for this kind of option trading,
18 delta was not particularly informative. I think we
19 had some analysis that's at 25 percent of the time,
20 I got the direction wrong. Predicted the Fund would
21 lose money, when it actually made money. So the
22 jury was certainly out. But -- but it was something
23 that I thought had some promise. But, you know,
24 it's nondirectional fund. So using a directional
25 metric didn't seem intuitive to me, but we had

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1 agreed to start monitoring it to see whether or not
 2 it had some predictive value. Started, I think, the
 3 first of February to look at it.
 4 Q. Well, did you -- you expressed that it
 5 didn't have utility or you didn't think it had
 6 utility. That was your view.
 7 Did others at Catalyst share that view?
 8 A. Well, my view was I didn't -- I never used
 9 it in -- in, you know, 12 years of operating the
 10 Fund. So I didn't know, which is why I said let's
 11 take a look and see what it looks like after we got
 12 some history.
 13 Q. Why do you say you didn't use it? I mean,
 14 again, we just covered that wasn't among other great
 15 metric, OptionVue, the modeling software tool that
 16 you used incorporated delta information, right?
 17 A. Yeah, it did. I mean, the reason I didn't
 18 use it was the type of options spreads I used. For
 19 example, the call ratio spread will show you a short
 20 delta and will make money if the market goes higher.
 21 So, you know, that -- that's just the way I use
 22 options. I'm not using them to make directional
 23 bets. I'm using directional indicator. Again, it
 24 didn't seem intuitive. In particular, one of the
 25 spreads I used most commonly, as I mentioned, you

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1 put it on, delta says negative. And yet you make
 2 money if the market goes higher in most cases.
 3 So, again -- again, obviously, delta's a
 4 very common metric. So I was certainly interested
 5 to see whether it might have some utility. But I've
 6 never used it, and I have nondirectional funds. So
 7 that's not how I use the options listed. Take
 8 direction at best.
 9 Q. Why don't you turn to what's been marked
 10 as Exhibit 21.
 11 A. Got it.
 12 (Exhibit 21 was marked for identification.)
 13 BY MR. FOSTER:
 14 Q. Okay. And this document has a Bates
 15 number of Catalyst_005_0118107. It also bears a
 16 prior exhibit number of Division Exhibit SEC 46.
 17 Do you recognize this document?
 18 A. Yes, I've seen this before.
 19 Q. Okay. This is an e-mail from Ms. Rios to
 20 you on December 10th, 2016. And the subject matter
 21 is, Booking losses phone call.
 22 A. Yes.
 23 Q. Okay. And in this -- and this e-mail's
 24 coming on the heels of the Fund suffering a drawdown
 25 in December 2016, right?

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1 A. I believe so, yes.
 2 Q. And among other things, Ms. Rios writes
 3 that from what she sees, a 1 percent upmarket move
 4 is equivalent to a 5 percent decline and NAV.
 5 Do you see that?
 6 A. I see that.
 7 Q. Okay. Were you aware of that information
 8 in December 2016?
 9 A. Yeah, I appreciated her doing that
 10 analysis. A good thing to surface before we had our
 11 phone call to determine the item received.
 12 Q. And were there -- were there -- so this
 13 is -- she's writing this at -- on December 10, 2016,
 14 but did that -- did that correlation, a 1 percent
 15 upmarket move equivalent to at least a 5 percent
 16 decline, was that -- was that true on other days in
 17 either December or February of 2017?
 18 A. I'm not certain it was true at the time
 19 she wrote the e-mail. I don't know what settings or
 20 assumptions she was making about the portfolio and
 21 volatility and all the different things. But, like
 22 I said, you know, Kimberly's a smart woman. And I
 23 appreciate her surfacing. This is good information,
 24 because we were about to get a phone call and
 25 discuss this recommendation, others from Catalyst

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1 recommendation, my own files, and we did that.
 2 We -- and I don't remember the specifics. I don't
 3 remember if we executed any of this -- of her
 4 suggestion or did something different. But we had a
 5 good discussion. We agreed on what actually to
 6 take, and thus my memories -- like I said, we agreed
 7 on a solution. We came out, and the solution turned
 8 out to be, you know, pretty effective for December.
 9 Q. And why do you say that?
 10 A. Well, because we're in a drawdown that I
 11 don't remember how deep it went, but we recovered.
 12 We mitigated the further drawdown and -- and
 13 recovered by months' end to -- if that 4 percent
 14 number's accurate, from a previous exhibit, to
 15 account for 4 percent of December, and then proceed
 16 to have a positive January. So this -- this whole
 17 discussion was going on in the December drawdown.
 18 Like I said, she really did a nice job of
 19 surfacing, you know, one solution. And pointing out
 20 what she saw as a risk. We had a discussion. I
 21 think that's how things should work. And it was
 22 effective.
 23 Q. Okay. We could look at the trade log and
 24 determine whether -- whether her suggestion was
 25 implemented or not, right?

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1 A. We probably could, sure.
 2 Q. Okay. Did you recall whether you agreed
 3 with her suggestion of how to reduce risks in
 4 February?
 5 A. I don't remember, because, again, I didn't
 6 know from her e-mail exactly what assumptions she
 7 was making, what kind of time frame she's looking
 8 at, 1 percent move tomorrow, a week, month,
 9 whatever. So I have a lot of questions. But, as I
 10 said, I know she's -- she's a smart woman, and she's
 11 perfected at surfacing the risk. And, again, I
 12 don't remember the specific discussion about the
 13 phone call. But I do remember she participated.
 14 The whole Catalyst team participated. We tossed
 15 around solutions like this. We tossed around my
 16 ideas, Catalyst ideas, and we came up with a way
 17 that we felt was a good balance to manage the risk
 18 most effectively, which is what -- you know, what we
 19 always did.
 20 Q. What do you mean that's what you always
 21 did?
 22 A. Well -- well, once we started to have
 23 these collaborative meetings around risks, which
 24 began right about this time in early December, we
 25 had many, many, many ongoing discussions. Catalyst

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1 risk even myself and Kimberly, of course, to -- to
 2 talk through if there were some stress on the Fund,
 3 if there was a volatile day in the Fund, to talk
 4 through what we should do about it. And I think
 5 that was -- that was pretty effective in, you know,
 6 having more collaborative collective decision. We
 7 did the same thing in February. We don't know if it
 8 was better or worse there was, but it was all hands
 9 on deck. So that that's what we --
 10 Q. The only one in the place in trades in the
 11 Fund was you; is that right?
 12 A. Yes, that's correct.
 13 Q. And you had the ultimate say over -- over
 14 what trades to make or not make in the Fund, right?
 15 MR. KOPECKY: Objection. Form and
 16 foundation.
 17 A. No. Actually, the advisor did. And there
 18 were certainly times when I disagreed, but I
 19 followed instructions.
 20 BY MR. FOSTER:
 21 Q. But you were the -- you and Ms. Rios were
 22 the only -- you were disclosed as the portfolio
 23 manager, correct?
 24 A. Correct.
 25 Q. In this time period, and Ms. Rios was the

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1 coportfolio manager?
 2 A. I think during this period. I don't
 3 remember when we -- she became concerned about the
 4 regulatory interest in the Fund. I think after her
 5 testimony, she became a bit upset and asked me if
 6 she could leave the Fund. So -- but at this time, I
 7 think she was the coportfolio manager.
 8 Q. So you indicated that you had some
 9 questions in your mind about, you know, how she was
 10 arriving at this -- this statement here, 1 percent
 11 upmarket move is equivalent to 5 percent decline in
 12 NAV. Do you know what assumption she was making and
 13 what that was based off? Did you ask her those
 14 questions?
 15 A. I don't remember. I think it might have
 16 been a phone call. We might have just proceeded.
 17 It was a Saturday. I don't remember when I actually
 18 saw this e-mail. I don't remember when the phone
 19 call was, so it may be that I didn't have a chance
 20 to talk to her until we got the group together. I
 21 just don't remember.
 22 Q. Before mid-February 2017, was there ever a
 23 time or times that you disagreed with what someone
 24 else at Catalyst was -- was instructing you to do
 25 with respect to managing the Fund, but you did it

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1 anyway?
 2 A. Right up until the last part, I think I
 3 understood your question, but I don't -- I'm not
 4 sure I understand the whole question.
 5 Q. Well, one of your prior responses, you
 6 indicated there were times that you disagreed, but
 7 you followed instructions and went ahead and made --
 8 took certain steps in trading for the Fund. Did
 9 that ever occur before the mid-February 2017 time
 10 period?
 11 A. I don't recall specifics other than that
 12 certainly occurred. December of -- I don't know
 13 when -- but that wasn't an unusual occurrence. We
 14 had constructive discussions. We sometimes had
 15 heated discussions. We tossed back and forth
 16 alternatives. And, as I said, I was always very
 17 conscious of the fact that I served at the advisors'
 18 pleasure, so to speak. And if they, you know, if we
 19 disagreed and they wanted something done, I did it.
 20 Q. What Ms. Rios is stating here is that the
 21 Fund from her -- from what she saw from her
 22 perspective, what was highly sensitive to an
 23 upmarket move, right?
 24 A. Well --
 25 MR. KOPECKY: You can't say what Kimberly

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1 was thinking.

2 Go ahead and answer as best you can.

3 A. It looks like that's what she's

4 describing. But, once again, my first question, you

5 know, if I'm seeing this today for the first time,

6 I'm wondering whether -- what time frame she's

7 using. That's just not clear to me, so there are a

8 lot of questions when you come up with something

9 like this. And, again, Kimberly was, you know, very

10 skilled. And I valued her opinion, but at the same

11 time, I'm not sure what she's -- you know, I would

12 need some more information. But it's useful that

13 she raised them.

14 BY MR. FOSTER:

15 Q. Okay. Well, the useful information she

16 raised, if it was, in fact, true, this would be --

17 would that have been of concern to you?

18 A. Yes, absolutely.

19 Q. And that would have told you that there

20 was a lot of risk in the Fund, if it was true,

21 right?

22 A. Well, again, true, it means what scenario

23 is she looking at? So -- so it could certainly be

24 true if she was looking at a 1 percent move in the

25 next ten minutes. That might not be relevant. So

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1 if she didn't make a mistake in a modeling selection

2 and option, if -- if -- if, certainly there would be

3 concern.

4 Q. Okay. But you -- you believe that

5 whatever questions you had at the time concerning

6 the dates as per Ms. Rios' statement that you -- you

7 know, this was a pretty significant thing she was

8 saying. So do you think you satisfied yourself and

9 got answers to all these questions that you're

10 raising now?

11 A. I'm certain that we had a healthy

12 discussion that the phone call that she refers to.

13 And I'm certain coming out of that discussion that

14 we had a consensus of what actually is to take and

15 that I executed those actions.

16 Q. Can you give me one concrete example that

17 you remember of you entering a trade for the

18 Hedged Futures Fund that you were ordered to make

19 but that you disagreed with?

20 A. I can't cite an example for you other than

21 during this period of time, I remember having some

22 disagreement in December with the actions that

23 Catalyst wanted me to take, but agreeing to take

24 them.

25 Q. Can you -- can you give me an example? Do

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1 you remember ever refusing to enter a trade that you

2 were ordered to make?

3 A. No.

4 Q. That never happened?

5 A. I don't remember one time.

6 Q. Okay. In this -- in this time period in

7 December 2016 through February 2017, did you want to

8 be more aggressive or more conservative --

9 conservative than what Catalyst wanted?

10 A. I -- I don't remember characterizing as

11 more aggressive or more conservative. It's more a

12 matter of technique, what actions to take. I think

13 we all agreed that we need to be more conservative.

14 That was the point of disagreement when there was

15 some. And I don't mean to categorize there was

16 always disagreement. But there was certainly always

17 active discussion between myself and Catalyst during

18 this time.

19 Q. Mr. Walczak, let me show you one last

20 document. Can you pull up Exhibit 36?

21 A. Okay. Got it.

22 (Exhibit 36 was marked for identification.)

23 BY MR. FOSTER:

24 Q. All right. And Exhibit 36 is your answer

25 to the SEC's complaint in this case.

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1 Have you seen this document before?

2 A. I probably have. I've seen a number of

3 legal documents. I can't swear that I've seen this

4 one, but probably.

5 Q. Do you have any recollection of

6 reviewing -- you understand there was a response

7 filed on your behalf to the complaint in this case?

8 A. Yeah, I do. If that's what this is, like

9 I said, I don't really recognize legal documents

10 sometimes, but I do recall that a response was

11 filed. And I do recall reviewing that with counsel.

12 Q. Okay. And did you review it to ensure

13 that your answers were accurate?

14 A. I -- I reviewed it with counsel to ensure

15 that -- yeah, that my answers were accurate.

16 Q. Okay. Once we've talked about previously

17 that -- that the complaint allegation included

18 references, citations, quotations to certain house

19 calls. So if you turn to paragraph 51. Okay. 51

20 is quoting statements from the open house call on

21 November 4, 2014.

22 Do you see that?

23 A. Yes.

24 Q. Okay. And we reviewed a transcript from

25 for that house call earlier today.

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1 Do you recall that?

2 A. Yes.

3 Q. Why did you deny paragraph 51 to the
4 complaint?

5 A. I'm not sure what paragraph 51 is
6 alleging.

7 Q. Well, you can read it. You can see what
8 it alleges, right?

9 A. Well, unless I'm missing something,
10 paragraph 51 says, for example. So I don't know
11 what -- what I'm denying here.

12 Q. Okay. So you're not able to tell me why
13 you denied paragraph 51?

14 A. I don't recall. Again, conversation with
15 counsel. I'm not familiar with incorrect way to
16 respond to these things -- respond to some of these
17 things. But, again, I don't -- I don't see
18 something I'm denying specifically on paragraph 51.

19 Q. Okay. Did you deny -- do you know if you
20 denied the paragraph, because the house call was not
21 accurately quoted? Are you taking issue with --
22 with the fact that you made these statements on the
23 house call?

24 MR. KOPECKY: I'm going -- I'm going to
25 object. Mike, we've been through this. He answered

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1 in the interrogatories. He answered these in
2 consultation with counsel. He's not going to tell
3 you what his counsel told him, because I'm not going
4 to let him. And he just said, I don't really recall
5 what it was after my conversation with counsel.

6 We're past seven hours, according to my calculation.

7 The two documents before you said was your
8 last you were gonna show him. So -- I'm objecting
9 to continuing this line of questioning. What do
10 you -- what do you have left?

11 BY MR. FOSTER:

12 Q. Okay. So if I asked you the same question
13 about any of the other allegations concerning the
14 house calls, all of which you denied, are you able
15 to tell me why you denied the paragraphs concerning
16 the house calls in the complaint?

17 MR. KOPECKY: Objection. Form and
18 foundation. You have to look at each of them
19 individually, which you don't have time to do,
20 because your seven hours are up.

21 MR. FOSTER: You are instructing the
22 witness not to answer.

23 MR. KOPECKY: Mike, I want to give you
24 some leeway here. I'm not -- I'm instructing him
25 not to answer that question, because he'd have to

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1 look at each individual paragraph to then go through
2 whether he remembers specifically why that paragraph
3 was denied or not denied, or if he was involved with
4 counsel in that paragraph or not in that paragraph.
5 And we don't have time to do that. But I don't want
6 to cut you off, if you have another topic or
7 question that you -- that you really would like to
8 get in.

9 MR. FOSTER: Well, I want to get into this
10 topic, because we served interrogatories that asked
11 for the basis for denials. Those interrogatories
12 did not provide any sufficient explanation as to why
13 these paragraphs were denied.

14 MR. KOPECKY: I disagree. So why don't
15 you pull up the interrogatories and pull up the
16 letter we sent where we described the basis for
17 those denials and show him those and see if it
18 refreshes his recollection as to why paragraphs were
19 denied. It's seven hours going --

20 MR. FOSTER: I'm sure -- I'll show his
21 interrogatories, if you want me to.

22 MR. KOPECKY: No. And show him the
23 letter, which I've already responded to explaining
24 why certain paragraphs were denied. It's not a
25 productive use of time. If the court reporter can

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1 confirm where we're at on the time on the record,
2 please.

3 THE REPORTER: I will need a moment to do
4 so. I don't have a rough calculation.

5 MR. KOPECKY: I've got us now beyond
6 seven hours. Does anyone disagree with that?

7 So I don't have to instruct him not to
8 answer. If you weren't keeping that -- the time, I
9 can't help you. It's beyond seven hours, so, yes, I
10 instruct him -- the deposition's now beyond the
11 limit allowed by the rules.

12 MR. FOSTER: Okay. So you're -- you're
13 instructing him not to answer my questions about the
14 basis for his denials --

15 MR. KOPECKY: No. I'm -- I'm instructing
16 him not to answer. I'm ending the deposition,
17 because we've gone beyond the seven-hour limit.

18 MR. FOSTER: Okay.

19 MR. KOPECKY: I don't even have to
20 instruct him.

21 MR. FOSTER: The primary -- the primary
22 reason that we've gone beyond the seven hours is
23 your speaking objections and your client's
24 nonresponsive answers to -- to questions throughout
25 the day.

| | |
|--|---|
| <p style="text-align: right;">Page 285</p> <p>1 So you guys burned the clock, not me, but 2 that's okay. We don't have to figure that out right 3 now. But one way or the other -- one way or the 4 other, we'll get an answer as to why you denied 5 these allegations. It seems to be something you're 6 just refusing to inform us of. 7 MR. KOPECKY: I wrote you a letter. 8 Respond to my letter. I wrote -- the day I wrote 9 you the letter. I wrote a letter explaining why 10 they were denied, and we responded to 11 interrogatories. 12 MR. FOSTER: Yeah. And your -- and your 13 letter -- 14 MR. KOPECKY: And -- 15 MR. FOSTER: And your letter didn't say 16 anything, and it was much easier just to deal with 17 it in his deposition. Then, of course, his 18 deposition got postponed, which is fine. Happy 19 to -- no fault of anybody on the call. But now here 20 we are. I'm asking the questions, trying to get the 21 information -- I can take up the Court's time. I 22 can file a motion to compel. And it's going to cost 23 a lot of resources. Or I can ask him in -- in the 24 deposition. 25 MR. KOPECKY: Mike, we can confer on that,</p> | <p style="text-align: right;">Page 287</p> <p>1 at 6:12 p.m. 2 (Recess taken.) 3 MR. KOPECKY: So we do not have any 4 questions at this time, and we'll reserve signature. 5 THE REPORTER: Would you like a copy of 6 the deposition, Mr. Kopecky? 7 MR. KOPECKY: Pardon me? 8 THE REPORTER: Would you like a copy of 9 the deposition? 10 MR. KOPECKY: If they order it written, 11 yes. Okay. We all good? 12 MR. FOSTER: Thank you, everyone. 13 (Deposition concluded at 7:18 p.m. EST) 14 - - - - 15 16 17 18 19 20 21 22 23 24 25</p> |
| <p style="text-align: right;">Page 286</p> <p>1 then, because I already responded by letter 2 detailing why they were denied. If you don't like 3 those responses, then I don't know what to tell you. 4 But you didn't accurately quote -- you 5 took things out of context. You used the word said. 6 All of those are legitimate reasons why we denied 7 paragraphs and the answers to interrogatories. So 8 let's not go back and forth on it. You can either 9 follow-up on my letter, or you can confer, you can 10 bring a motion. 11 But the dep -- I mean, again, if you had, 12 like, a different topic or something you wanted to 13 cover really quick, we'll stick around beyond the 14 seven hours. But if it's going to be about the 15 answer to the complaint or interrogatories, then I'm 16 not sticking around. We're ending the dep. 17 MR. FOSTER: Okay. Those -- those are my 18 remaining questions, so we'll -- we'll deal with 19 those outside of the deposition. 20 MR. KOPECKY: Okay. Then we're going 21 to -- we'll take a five-minute break so I can 22 consult with my client and my co-counsel to see if 23 we have any questions we want to ask now. 24 MR. FOSTER: Okay. 25 VIDEOGRAPHER: We're going off the record</p> | <p style="text-align: right;">Page 288</p> <p>1 CERTIFICATE OF WITNESS 2 3 4 I, EDWARD WALCZAK, do hereby declare under 5 penalty of perjury that I have read the entire 6 foregoing transcript of my deposition testimony, 7 or the same has been read to me, and certify that 8 it is a true, correct and complete transcript of 9 my testimony given on July 27, 2021, save and 10 except for changes and/or corrections, if any, as 11 indicated by me on the attached Errata Sheet, with 12 the understanding that I offer these changes and/or 13 corrections as if still under oath. 14 _____ I have made corrections to my deposition. 15 _____ I have NOT made any changes to my deposition. 16 17 Signed: _____ 18 EDWARD WALCZAK 19 20 Dated this _____ day of _____ of 20____. 21 22 23 24 25</p> |

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1 REPORTER'S DEPOSITION CERTIFICATE

2

3 STATE OF FLORIDA

4 COUNTY OF VOLUSIA

5

6 I, Vanese Killingbeck, Professional

7 Reporter and Notary Public, certify that I was

8 authorized to and did stenographically report the

9 deposition of EDWARD WALCZAK, pages 6 through 281;

10 that a review of the transcript was requested; and

11 that the transcript is a true record of my

12 stenographic notes.

13 I further certify that the deposition was

14 taken remotely within the State of Florida at the

15 time and place specified herein above and that I am

16 not a relative, employee, attorney, or counsel of

17 any of the parties, nor am I a relative or employee

18 of any of the parties' attorneys or counsel

19 connected with the action, nor am I financially

20 interested in the action.

21

22 Dated August 10, 2021.

23

24

Vanese Killingbeck

25 Registered Professional Reporter

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1 ERRATA SHEET

2 Deposition of: EDWARD WALCZAK

Date taken: JULY 27, 2021

3 Case: SEC v. EDWARD WALCZAK

4 PAGE LINE

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6 REASON: _____

7 CHANGE: _____

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Signed _____

Dated _____

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[sort - stress]

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